DIVORCE: THE IMPACT ON CHILDREN AND FAMILIES

HEARING

BEFORE THE

SELECT COMMITTEE ON CHILDREN, YOUTH, AND FAMILIES HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

SECOND SESSION

HEARING HELD IN WASHINGTON, DC, JUNE 19, 1986

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DIVORCE: THE IMPACT ON CHILDREN AND FAMILIES

THURSDAY, JUNE 19, 1986

House of Representatives,
Select Committee on Children, Youth, and Families,
Washington, DC.

The committee met, pursuant to call, at 9:35 a.m., in room 1310, Longworth House Office Building, Hon. George Miller (chairman of the committee) presiding.

Members present: Representatives Miller, Coats, Anthony, Bliley, McKernan, Cobey, and Levin.

Staff present: Ann Rosewater, deputy staff director; Jill Kagan, professional staff; Carol Statuto, minority deputy staff director; and Joan Godley, committee clerk.

Chairman Miller. The Select Committee on Children, Youth and Families will come to order for the purpose of conducting a hearing on divorce and the impact on children and families.

This committee, since its beginning 3 years ago, has tried very hard to focus on the most critical issues affecting our families and the children who live in those families. Today's hearing on the psychological and economic impacts of divorce should help us better understand a phenomenon which is changing the way we live, as well as the way we raise our children.

In fact, the number of divorces has tripled in the last two decades. Family structures have shifted dramatically, as has, in many cases, their standard of living.

Over 9 million children are currently living in single-parent families where the parent is divorced or separated. This is an increase of 4 million since 1970, even though the actual number of children declined during this period. It is now expected that half of all current marriages will end in divorce.

Experts today will summarize those factors affecting the well-being of children in families experiencing divorce, including continuity of parenting; household reorganization; parental conflict or communications; shifting parental role models; multiple relocations; marked changes, usually losses, in financial resources; and unsteady educational or social opportunities for the children.

We will see how there is an immediate and substantial drop in the standard of living for women and children following a divorce. We will see how this loss of income causes depression, which in turn affects a child's school performance, level of anxiety and health status. And, as a young student who has lived through a divorce will suggest, it may be conflict between parents, whether they are married or divorced, which really most affects children.

Unsettled by negative media images of children of divorce, she took the initiative to ask other students who also experienced their parents' divorce how they were coping. She learned that they weren't essentially any different than other kids, and that being treated responsibly, being communicated with, was of critical importance to their well being.

Divorce is a difficult experience and a difficult subject to discuss. But, we would be negligent in our responsibility if we didn't ask how these parents and children are coping. What are the short- and long-term effects of divorce? Is divorce contributing to the feminization of poverty, which subsequently impoverishes children as well? Do the laws which are supposed to facilitate the divorce process in fact contribute to new and more serious consequences? Do today's support and custody laws truly reflect the needs of children? And why do some children suffer few ill effects after the divorce of their parents, while some others suffer from multiple negative effects?

OPENING STATEMENT OF CONGRESSMAN GEORGE MILLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, AND CHAIRMAN, SELECT COMMITTEE ON CHILDREN, YOUTH, AND FAMILIES

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And why do some children suffer few ill effects after the divorce of their parents, while some others suffer from multiple negative effects?

These are some of the tough questions we are going to ask today. But they are critically important to policymakers, to parents, and to children.

I look forward to a very lively and informative hearing.

DIVORCE

A FACT SHEET

In two decades, divorces reached record high, now leveling off

At current rates, nearly half of all marriages will end in divorce. About one-third of all young adults will marry, divorce, and then marry again. (Cherlin, 1986)

There are more divorced individuals than ever before. In March 1984, divorced persons represented 9% of the ever-married population, compared with 4% in 1970 and 3% in 1960. (Bureau of the Census, 1985)

Between 1962 and 1981 the number of divorces almost tripled, reaching an historic high of 1.2 million divorces in 1981. In 1982, the number of divorces dropped by 4%, the first decline in twenty years. This decline was followed by a slight 1% drop in 1983, the last year for which final data are available. (National Center for Health Statistic [NCHS], December 1985)

According to provisional reports, the number of divorces remained relatively constant in 1984 and the first half of 1985. By the end of 1985, 1,187,000 divorces were reported, less than a 3% increase since December 1984. (NCHS, March 1986)

The increasing prevalence of remarriage is linked to the increasing prevalence of divorce. The proportion of all marriages which are remarriages has increased. The propensity to remarry after divorce has remained constant for white women, while it has declined for black women. Since 1960–65, the remarriage rate after divorce for whites has remained between 65 and 70 per 1,000 women. The rate for black women declined from 70.7 in 1960–65 to 33.4 in 1975–1980. (National Institute of Child Health and Human Development [NICHD], 1984)

The number of children of divorced parents has also leveled off, but the number remains high after a dramatic increase during the 1970's

In 1970, almost 5 million children under age 18 (60.5% of all children living with one parent) lived in single parent families with divorced or separated parents (the remainder lived with a parent who was widowed, never married, or whose spouse was absent for reasons other than marital discord). By 1984, more than nine million children (64.9%) lived in similar circumstances. This increase occurred while the total number of children under age 18 declined from 69.8 million in 1970 to 62.3 million in 1984. (Census, 1985)

Each year since 1972, more than one million children have been in families that have undergone a divorce. (NCHS, Dec. 1985)

Thirty-eight percent of white and 75% of black children born to ever-married mothers may experience the dissolution of their parents' marriage by the time they reach age 16. (NICHD, 1984)

Many children whose parents divorce will also experience a remarriage. It is estimated that for children in a remarriage family, about two-fifths of white children and three-fifths of black children will experience the dissolution of a parent's remarriage as well. (NICHD, 1984)

Divorce, custody, and child support laws have changed over the last decade

In 1970, California instituted the first "no-fault" divorce law. All states except South Dakota now have some form of no-fault divorce law in place. (Weitzman, 1985)

Thirty states have adopted some form of joint custody legislation. The laws range widely in purpose, from simply authorizing courts to award joint custody if appropriate, to making joint custody the preferred option. Custody awards are disputed in about 10% of divorces. (Weitzman, 1985)

In 1984, Congress enacted the Child Support Enforcement Amendments to improve the child support collection system so that child support awards would be enforced for all families, not only AFDC families. As of April 1, 1986, Oregon is the only state in compliance with all of the law's provisions.* (Office of Child Support Enforcement (OCSE), 1986)

Divorced families, children lose substantial income

Thirty-six percent of divorced or separated single women with children had incomes below the poverty level in 1983. Twenty-nine percent of the ever-divorced (including widowed or remarried women) or currently separated women with children had incomes below the poverty level in 1983. (Census, 1985)

When income is compared to need, divorced men experience an average 42% rise in their standard of living in the first year after a divorce, while divorced women experience a 73% decline. (Weitzman, 1985)

In 1983, 33% of all poor children lived with parents who were separated or divorced. (U.S. House of Representatives, Committee on Ways and Means, 1985)

Children who were still in single-parent families one year after their parents' divorce experience a 27% decline in family income compared to pre-divorce income. (Duncan and Hoffman, 1985)

In March 1984, the mean family income for children living in mother-only families where the mother was divorced was $12,290, and where the mother was separated, $8,760. (Census, 1985)

Spousal support

In 1984, only 12% of the 6.8 million ever-divorced or currently separated women with children were awarded alimony payments. (Census, 1985)

The average amount of alimony received by women in 1983 was $3,980, an insignificant increase after adjusting for inflation from the 1981 level of $3,000. However, the 1981 amount represented a 25% decrease from the1978 level after adjusting for inflation. The average amount of alimony received by women with children in 1983 was $2,915. (Census, 1985)

In 1984, about 37% of the 14.5 million women who had ever been divorced reported receiving some form of property settlement, down from 45% in 1979. of the 5.4 million ever-divorced women with children in 1983, 2.2 million (41%) received some type of property settlement. (Census, 1985)

Child support

In 1984, 6.8 million ever-divorced or currently separated women were living with children under 21 years of age whose fathers were not living in the households. Sixty-nine percent (about 4.7 million women) were awarded child support payments as of the survey date. (Census, 1985)

Of the 4.7 million ever-divorced or separated women awarded child support, about 3.8 million (81%) were supposed to receive child support for their children in 1983. Of those due payment, 76% received some support in 1983. (Census, 1985)

Of all women due child support in 1983 (including never-married women), half received the full amount due. Twenty-four percent did not receive any payments. (Census, 1985)

The average annual child support payment in 1983 for remarried women whose previous marriage ended in divorce was $2,164 (a decline of 12% in real terms since 1978); for divorced (but not remarried) women the amount was $2,491 (a decline of 16% in real terms since 1978); and for separated women $2,682 (a decline of 8% in real terms since 1978). (Census, 1985)

Of the 1.9 million ever-divorced or currently separated women with children who had incomes below the poverty level in 1983, 57% were awarded child support, compared to 69% for all ever-divorced or currently separated women. Sixty-two percent of those who were supposed to receive child support in 1983 received at least partial payment. The average award was about $1,500 for 1983, about 60% of the average payment received by all women. (Census, 1985)

Divorce rates vary considerably by age and region

Divorce rates generally are highest for young men and women and decline for older age groups. In 1983, divorce rates were highest for married men 20–24 years of age (45.2 per 1,000) and for teenage women (48.1). In 1983, the average duration of marriage was 9.6 years. (NCHS, Dec. 1985)

In 1983, well over half of all divorces (57.9%) occurred among men who were 24 years or younger when they married. Almost three-fourths of all divorces (71.4%) occurred to women who were 24 years of age or younger when they married. (NCHS, Dec. 1985)

The divorce rate is considerably lower in the Northeast than in the Midwest; both rates are considerably lower than rates in the South and West. (NCHS, Dec. 1985)

NOTE.—For a complete list of the number of states in compliance with each provision of the Amendments, see "Implementation Status of 1984 Child Support Enforcement Amendments"; OCSE, April 1, 1986.

Chairman **MILLER**. These are some of the tough questions we are going to ask today. They are critically important to policymakers, to parents, and to children, and I look forward to the lively and informative hearings, and I would like now to recognize the ranking minority member, Congressman Coats of Indiana.

Mr. COATS. Thank you, Mr. Chairman. I am pleased that the Children, Youth, and Family Committee is conducting a hearing this morning on the subject of divorce. It is an important subject for us to look at. This committee has heard the detailed and gripping testimony in the years of its existence from families, from children, and from people throughout this country. I think the subject and the question of divorce has been inextricably linked with much of the social ills that we have been addressing.

We have had some testimony before the committee in past hearings, and we will continue to have testimony here this morning, some eloquent testimony from several of the witnesses indicating that the consequences of divorce are serious, that it is a societal problem and something that we ought to be looking at.

The chairman has detailed some of the disturbing statistics regarding the increases in divorce across the country. The economic consequences to single-parent families, to children being raised in single-parent families, and the social consequences. The behavioral consequences to children who are the unfortunate victims of divorce, the difficulties they have in adjusting to school, to life at home, to their friends. The disturbing statistics regarding the incidences of increased involvement in drug abuse, alcohol abuse, teen suicide, and a number of disturbing social trends that this committee has had to deal with.

The question is for us to determine what kind of policy responses this committee can and should make and also look at the kinds of response that the society should make. So I am looking forward to the testimony of our witnesses this morning, and further examining this most disturbing area. Thank you for the opportunity to make the opening statement. I have a more detailed statement that I would ask to have entered in the record, and also ask the customary two weeks for other members to submit their testimony and statements for the record.

[Prepared statement of Congressman Dan Coats follows:]

OPENING STATEMENT OF HON. DAN COATS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA, AND RANKING MINORITY MEMBER

I'm glad to see us openly discussing the results of our society's declining commitment to children: In this case, the dramatic rise in our nation's divorce rate and the resulting long-term negative effects on children.

As we try to analyze these major trends that drastically affect families, too often we focus only on things which are easily measurable and open to policy manipulation. In so doing we often refuse to deal with what is at the heart of these trends.

Dr. Peter Uhlenberg has recently documented that in spite of large increases in funding for various federal social programs the well-being of many adolescents has precipitously declined.

I'm not saying that all these programs were ineffective. I am, however, pointing out that there were other social/cultural factors which were having a more negative impact than these programs were able to address.

There seems to be two important environments related to such issues as divorce and its impact on children. One is an external environment which is more easily subject to manipulation through policies and programs. The second, and I think the more important, is the internal environment, the character and values of our people.

Dr. Glenn Loury, a Harvard economics professor and one who realizes the importance of economic influences, has stated the following with regard to the black family: "This points to what I consider to be the most critical element of any strategy to confront the current black family crisis—the need to promote virtuous behavior among the inner-city poor . . . one might refer to such an activity as 'moral leadership' . . . the matter is urgent."

In the National Family Strengths Project that I and others of my colleagues are participating in with leading national private sector organizations, researchers and administration officials, we have been looking at these internal factors as well as the external factors. We are seeing that historically when cultural attitudes appeared to be trending toward stronger emphasis on time-tested internal factors such as character, the family has fared much better. Among other things, those periods appear to be parallel with stabilization and/or declines in the divorce rate. I've asked my staff to continue to analyze and further develop this research so we can look at what can be done to address the root problems of divorce.

Mr. Chairman, I have more I would like to include in my opening statement, but in the interest of time, I will submit a written statement for the record. Also, I would request that the record remain open for at least two weeks following this hearing so that I could submit further written testimony for the record.

Chairman MILLER. Without objection. Mr. Anthony.

Mr. ANTHONY. I have no statement.

Chairman MILLER. Mr. Bliley.

Mr. BLILEY. I'll have a statement for the record, Mr. Chairman, but none at this time.

[Opening statement of Congressman Thomas J. Bliley, Jr., follows:]

OPENING STATEMENT OF HON. THOMAS J. BLILEY, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. Chairman, I am glad that the Select Committee is holding this hearing on the effects of divorce on children and families. It is evident from my own personal experience that divorce is becoming more common in our country, and since there is no doubt that marriage is the foundation of families, the dissolution of marrige must have a tremendous impact on most, if not all, men, women, and children who experience it.

I'd like to cite a few figures that I came across in reviewing the material for this hearing. In the last 70 years, the divorce rate has increased from one divorce per thousand married persons in 1915 to 5 per thousand in 1985. In the last 25 years alone, there has been an almost steady increase from 2.2 divorces per thousand to 5.0. Children are involved in three out of five divorces. Finally, the percentage of children under 18 in one-parent homes has increased from 9% to 23%. (Another study indicates that 36% of U.S. children live in an arrangement other than the two-parent family.)

I think this situation is tragic. Much of the testimony I have read indicates that divorce poses many difficulties for children. The emotional and economic impact, especially on women with children, is also evident. However, others seem to want to downplay the impact of divorce on children by saying that divorce per se is not harmful, but rather, the breakdown on the parent-child relationship which often accompanies it.

This tells me two things. First, even though there may be difficulties at home before the divorce, attention is given by one or both of the parents to the intellectual, moral, and social development of the children. Afterwards, parental depression, attention to new relationships, or just plain lack of time can force children into independence before they are prepared for it almost certainly before they desired or planned it.

Second, divorce, even if it is not necessarily harmful to children, appears not to be so only despite the difficulties faced. This was a point brought out by the Children, Youth, and Families Committee's hearing on family strengths. Children in two-parent families do not have the tremendous obstacles to development that children with only one parent have.

The growing cultural change is that marriage need not be permanent. Individual happiness is important, there's no doubt about that. However, marriage is a union of two people, and children are a product of their unity. By its very nature, marriage asks a sacrifice of us and has responsibilities which accompany it. These responsibilities are not without their headaches, as any parent will tell you, but they also have joys no single person could began to understand.

I believe we have two options facing us in America and on this committee, and which perhaps could be the subject of a future hearing. The first is to acquiesce quietly to changing social mores with regard to divorce. In other words, we as a people can try to normalize divorce as much as posible, treating the harmful effects which it will continue to have on most children. The other option, and the one I prefer, is to look at the causes of social trends to see why divorces have increased. Then, once root or principal causes are discovered, we can see if these trends can be reversed. This latter option does not exclude treatment; rather, it sounds a hopeful note for future generations by adding a commitment of prevention to care after the fact.

Because we are human beings and by nature weak and changeable, divorce will probably always be with us. Nevertheless, we also have responsibilities to the persons with whom we have promised to share our very selves in marriage, and the children we have brought into this world. The legal dissolution of marriage is an "out" for couples who have made a grave mistake, but it need not be an "easy out."

Thank you, Mr. Chairman.

Chairman MILLER. The first panel will be made up of Laurie Dixon, who is the managing editor of "The Pitch," and is a student at Walter Johnson High School in Bethesda, MD; Dr. Judith S. Wallerstein, who is the executive director for the Center for the Family in Transition in Corte Madera, CA; Dr. Gene Brody, who is the codirector of the program for the study of competence in children and families at the University of Georgia; Dr. Neil Kalter, who is an associate professor at the University of Michigan in Ann Arbor; Nancy Polikoff, who is the director of the child custody and child support projects for the Women's Legal Defense Fund; and, David Levy, who is the president of the National Council for Children's Rights

If you would all come forward, please, to the witness table. Your written statements will be placed in the record in their entirety. Please proceed in the manner in which you are most comfortable. I think we will take you in the order in which I called your names. So Laurie, we are going to start with you. This is a very relaxed committee, so you proceed in the manner in which you think you can best tell us your story and your concerns. Welcome to the committee. We appreciate you taking your time to be with us this morning.

STATEMENTS OF LAURIE DIXON, MANAGING EDITOR, "THE PITCH," WALTER JOHNSON HIGH SCHOOL, BETHESDA, MD

Ms. DIXON. Thank you. I am a child of divorce. My parents separated when I was 2 years old and divorced 2 years later. I live with my mother and older brother and sister and see my father on Sundays.

Recently, I interviewed many Bethesda area high school students whose parents are divorced for an article in my school newspaper. Since then, I've talked with more high school students with divorced parents, many of whom feel insulted by the image and treatment of children of divorce as pitiful products of a broken home or as trouble-making latchkey waifs.

My own experience with divorce was not very negative. The main difficulty I had in dealing with my parents' divorce was that I didn't understand what was happening at the time, and my parents never really explained it to me when I was older. Consequently, there was a time when I really longed for my parents to remarry. I loved both my parents, and I didn't understand why they couldn't love each other. However, when I became a little older, I easily recognized my parents' inherent differences. I am now thankful that my parents did divorce.

If my parents were together, I would have a terrible home situation. I have few memories of my parents before the divorce, but one is particularly striking. I think it was after their separation, and my father had taken us kids out for dinner. He was now leaving, and he and my mother were yelling at each other. I'm not sure about what they were arguing. It may have been that my father had kept us out too late. But I do remember that I was trying to say good-bye to my father and that he didn't hear me. This is probably the type of situation that would exist today if my parents were together. They would probably be so caught up in their own problems that they would forget their children.

If my home situation were strained and tense or outwardly hostile, as I'm sure it would have to be if my parents lived together, I know that I would try my best to stay out of the house as much as possible. If avoiding my parents became my first objective, a much worse situation could result. I would like to say with conviction that I would never have been stupid enough to abuse illegal drugs or alcohol, but with me trying to escape such a rotten reality, I don't think it is entirely out of the question. Drugs appear to be a very good way to escape and forget.

I firmly believe that it is the quality not the quantity of parents that is important. My mother is wonderful; trusting, understanding, fair, sympathetic and helpful are just a few of the adjectives that come to mind. She knows what I need in a parent and she does that job very well. Of course, we sometimes argue. Of course there are times that you could throw my above testimony at me, and I would have a hard time believing that I even said it. But all in all, we get along really well. How many parents, divorced or not, can say that of their teenaged kids?

I am not so close with my father. We have very different values and opposite stances on almost every major political issue. If I lived with him in a joint-custody arrangement or saw him more often, we would have a much more difficult time staying friendly. As it is, I see him once a week at most, and we generally avoid certain topics of conservation.

When I interviewed other children of divorce, I was surprised at how well they all seemed to have taken it. They were all very willing to talk to me about their experiences. I think they were excited to have a chance to change the media's image of divorce as having such horrible effects on children. Many even cited positive effects, such as growth, greater self-reliance, closer relationships with one or both parents and a greater sense of responsibility. In general, problems, if there were any, were worked out early on. None of the students I talked with regret their parent's divorce, even those who lost contact with or rarely see one of their parents.

When I recontacted many of the students to ask them if there was anything specific they wanted me to say at this hearing, the response I got was, "Just show them that we are not any different from other kids."

Divorce itself is not the true problem for kids today. Bad marriages which continue or end and lack of communication pose much more substantial threats to the healthy upbringing of a child. If we are to combat effectively the problems between parents and their children, we must teach both children and adults responsibility, sensitivity, and the art of communication.

I would also like to direct your attention to the article which I included in the record.

[The article follows:]

the pitch

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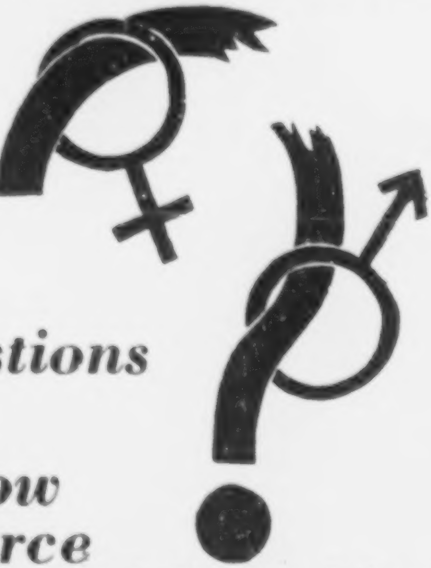

Questions that Follow Divorce

Psychiatrist, Family Members Debate the Long Term Effects of a Broken Marriage

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> *"I don't think anyone's thrilled when their parents get divorced, but nobody I know seems incredibly devastated. All the horrible latchkey waif and broken home stories are probably written by people who grew up in two-parent homes, are happily married, and want others to look bad."*

[illegible]

> *"I think it's in the kids' interest to divorce if the parents can't get along. There would be too much tension and stress, perhaps fighting and violence if parents stayed together (for the sake of the children). That would be unfair to the children."*

[illegible]

B-CC Sophomore Daniel Shapiro, who was about 11 when his parents separated, feels that his parents' divorce made his life "more diverse, more independent."

"I think I might be less independent for having a stronger, more settled home situation," he explains.

Shapiro's parents opted for joint-custody, which Shapiro sees as "probably the best arrangement." He now lives about three weeks with his mother, then the next three weeks or so with his father.

"It wouldn't be right to stay in one house all the time," he believes. "I mean, it's a pain to move back and forth all the time, but I think everyone benefits."

Harriot says his parents "despise each other" and haven't seen each other for six years, except at his brother's graduation.

"Mom and Dad are totally two different people," he says. "They do not accompany each other in the right way. It'd be total hell if my parents hadn't divorced."

"My parents are so different it's strange to think they married anyway," McDonell continues. "I couldn't imagine them together. They're so different. I couldn't imagine them getting along."

"If parents yell all the time are unhappy all the time, it seems it can't be any better than one parent," McDonell reasons. "All those horrible 'latchkey waif' stories and broken home stories are probably written by people who grew up in two-parent homes are happily married and want others to look bad."

"I think it's in the kids' interest to divorce if the parents can't get along," Winston's daughter states. "There would be too much tension and stress, perhaps fighting and violence if parents stayed together (for the sake of the children). That would be unfair to the children.

"I think the divorce was definitely necessary," she concludes.

Fernandes describes his family's predivorce atmosphere as "boring."

"There wasn't the kind of affection my parents have now (for my stepparents)," he explains, "but it wasn't stormy." He believes there would have been a lot of tension if his parents had stayed together.

"It would have been miserable," he theorizes. "There was very low key tension before the divorce. I think there would have had to be high-key tension. I hate, hate, hate it when people fight—I just leave. My parents never fought openly. I never had to live with that. I'm grateful for that."

"As time passes, it can be worked through," Winston declares. "It helps mightily if the noncustodial parent stays in the picture, but that's not always the case. How kids do depends on how stable the custodial parent is, how they adjust and the other biggie is the importance of the other parent staying in the picture."

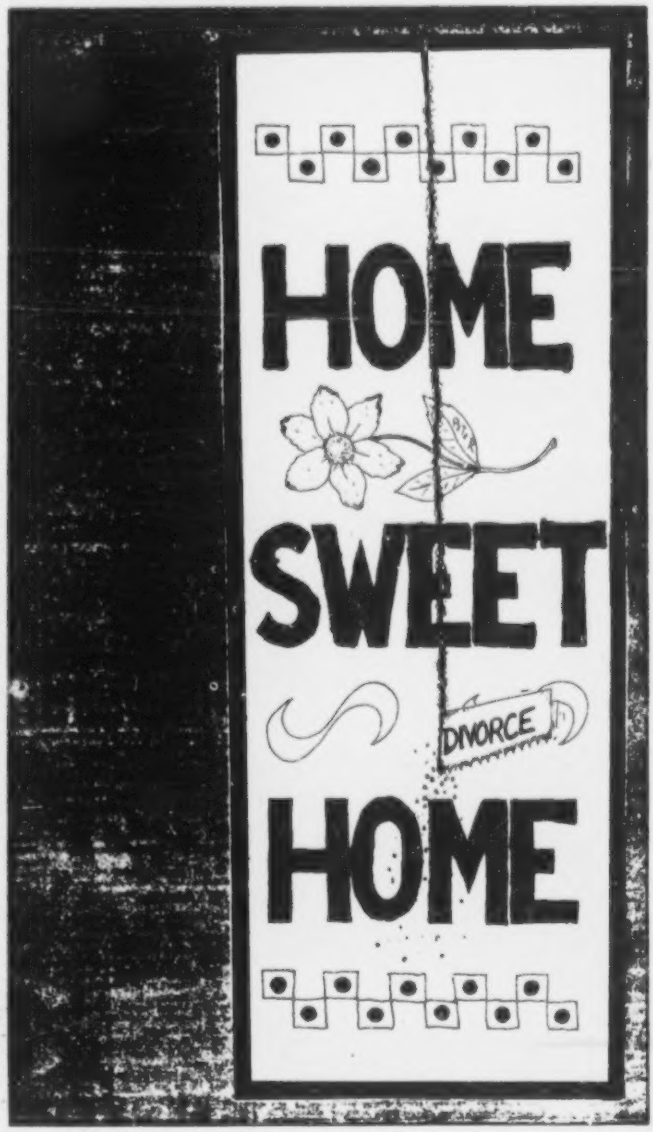
"There's not anything inevitable over the long run," Winston believes. "I don't believe that kids come out any different from it. It greatly depends on how the parents do."

Gross agrees. "Often, if it's a divorce which is [illegible] to the custodial parent, at a time when children most need reassurance from the remaining parent, the parent can't give.

"A child who's better adjusted before separation is more likely to adjust after," he continues. "If there's already a problem, it's likely to get worse. If the parents continue to fight even after the separation, often it's worse for the child. Often the child becomes the battle ground. If there's been a lot of fighting in the house prior to the breakup of the marriage, it's usually troubling to the child and there's more trouble when the breakup occurs."

"In the most ideal of circumstances of divorce, with all the right things being said, it's still traumatizing for the child," Gross concludes. "There's just a better way of doing it, with the least negative effects."

> ***"[The divorce has] made me a little more self-reliant. I can manage difficult situations because of it. You have to be strong enough to know, even though there's turmoil between [your parents], you're okay. I think I rely more on myself than I would have."***



PREPARED STATEMENT OF LAURIE DIXON, STUDENT, WALTER JOHNSON HIGH SCHOOL, BETHESDA

I am a child of divorce. My parents separated when I was two years old and divorced two years later. I live with my mother and older brother and sister and see my father on Sundays.

Recently, I interviewed many Bethesda area high school students whose parents are divorced for an article in my school newspaper. Since then I've talked with more high school students with divorced parents, many of whom feel insulted by the image and treatment of children of divorce as pitiful products of a "broken home" or as trouble-making "latchkey waifs."

My own experience with divorce was not very negative. The main difficulty I had in dealing with my parents' divorce was that I didn't understand what was happening at the time, and my parents never really explained it to me when I was older. Consequently, there was a time when I really longed for my parents to remarry. I loved both my parents, and I didn't understand why they couldn't love each other. However, when I became a little older, I easily recognized my parents' inherent differences. I am now thankful that my parents did divorce.

If my parents were together, I would have a terrible home situation. I have few memories of my parents before the divorce, but one is particularly striking. I think it was after their separation, and my father had taken us kids out for dinner. He was now leaving, and he and my mother were yelling at each other. I'm not sure about what they were arguing; it may have been that my father had kept us out too late. But I do remember that I was trying to say goodbye to my father and that he didn't hear me. This is probably the type of situation that would exist today if my parents were together. They would probably be so caught up in their own problems that they would forget their children.

If my home situation were strained and tense or outwardly hostile, as I'm sure it would have to be if my parents lived together, I know that I would try my best to stay out of the house as much as possible. If avoiding my parents became my first objective, a much worse situation could result. I would like to say with conviction that I would never have been stupid enough to abuse illegal drugs or alcohol; but with me trying to escape such a rotten reality, I don't think it's entirely out of the question. Drugs appear to be a good way to escape and forget.

I firmly believe that it is the quality not the quantity of parents that is important. My mother is wonderful; trusting, understanding, fair, sympathetic, and helpful are just a few of the adjectives that come to mind. She knows what I need in a parent and she does that job very well. Of course, we sometimes argue; of course there are times that you could throw my above testimony at me, and I would have a hard time believing that I even said it. But all in all, we get along really well. How many parents, divorced or not, can say that of their teenaged kids?

I am not so close with my father. We have very different values and opposite stances on almost every major political issue. If I lived with him in a joint-custody arrangement or saw him more often, we would have a much more difficult time staying friendly. As it is, I see him once a week at most, and we generally avoid certain topics of conversation.

When I interviewed other children of divorce, I was surprised at how well they all seemed to have taken it. They were all very willing to talk to me about their experiences; I think they were excited to have a chance to change the media's image of divorce as having such horrible effects on children.

Many even cited positive effects, such as growth, greater self-reliance, closer relationships with one or both parents and a greater sense of responsibility. In general, problems, if there were any, were worked out early on. None of the students I talked with regret their parents' divorce, even those who lost contact with or rarely see one of their parents.

When I recontacted many of the students to ask them if there was anything specific they wanted me to say at this hearing, the response I got was, "Just show them that we're not any different from other kids."

Divorce itself is not the true problem for kids today: bad marriages which continue or end and lack of communication pose much more substantial threats to the healthy upbringing of a child. If we are to combat effectively the problems between parents and their children, we must teach both children and adults responsibility, sensitivity, and the art of communication.

Chairman **Miller**. The members of the committee have a copy of that.

We are going to hear from all the witnesses before we let the members of the panel ask questions. Next we will hear from Dr. Wallerstein.

STATEMENT OF JUDITH S. WALLERSTEIN, EXECUTIVE DIRECTOR, CENTER FOR THE FAMILY IN TRANSITION, CORTE MADERA, CA

Ms. **Wallerstein**. I am executive director of the Center for the Family in Transition in Corte Madera, CA. The center is a nonprofit agency, established in 1980 by the San Francisco Foundation and the Zellerbach Family Fund. The mandate of the center is threefold: to develop, implement and assess a range of new services including preventive interventions, counseling and mediation, for families in separation, divorce and remarriage; to develop and mount research addressed to issues related to this population; and to provide education, consultation and training to professional groups who work with these families.

Since 1971 I have been principal investigator of the California Children of Divorce project, which is the longest continuous study of children and parents in divorced families in the Nation.

Children of divorce represent a hidden population, at risk for subsequent psychological problems and economic disadvantaging. Their needs and interests are insufficiently understood and poorly protected by the legal system, by the medical and mental health community, by the schools, by the churches, and by other institutions and agencies within our society.

My findings are based on a 10.9-year study of 113, largely white, middle class California children, who were 3 to 18 at the decisive separation. Although many of these children have successfully weathered the stress of marital breakdown, and have grown up with an added measure of independence and compassion, especially for the custodial mother or father who took major, or sole, responsibility for their upbringing, a significant number of them continue to suffer the effects of the divorce a full decade after the marital rupture.

Overall they are a moral group of young people who strongly eschew infidelity, and who are eager for a lasting marriage. They are especially concerned about avoiding divorce on behalf of their own unborn children. Their dominant feelings as they look back are of restrained sadness, with a residue of resentment toward their parents for not recognizing their incompatibility before having had children, and a wistful sense of having missed out on the experience of growing up in an intact family. Intense feelings of neediness are pervasive among those who are experiencing psychological difficulty at the 10-year mark.

Based on a range of measures of psychological adjustment and social functioning in various domains—school, job, family and peer relationships—with due regard to age considerations, we found 43 percent of these young people to be functioning well, 15 percent to be uneven, and 42 percent to be functioning poorly. These findings are striking, because all of the youngsters had been screened at the outset of the study to eliminate those showing psychological or learning difficulties prior to the divorce. Unlike our earlier findings that suggested a greater vulnerability of boys during the postdivorce years, we found at 10 years no significant difference between the sexes in adjustment.

Of the 42 percent who were doing poorly, the older adolescent girls especially suffered from low self-esteem, a sense of their own powerlessness, difficulty in making career commitments, and despair regarding their prospects for establishing lasting relationships.

Their concerns about trust between men and women and their fears of repeating the tragic mistakes of their parents were intense. "I am afraid to use the word love," said one 23-year-old woman. "You can hope that a relationship will last, but you can never expect it."

Many of the young men in the troubled group felt rejected by their fathers. These feelings were unrelated to frequency of contact, but reflected instead the quality of the relationship between father and son over the many years. Intense feelings of rejection among the boys at the 10-year mark were strongly linked to poor self-esteem, poor academic achievement, and to shallow aspirations. Many are still haunted by vivid memories of the marital conflict. "I saw my dad beat up my mom," said one 20-year-old man. "That's a scar I think of every day."

A significant number of our sample were pursuing vocational goals far below their intellectual capacities, and well below the professional attainments of their fathers and educational levels of their mothers. The downward mobility of the college-age youngsters is especially striking when we consider that 41 percent of their fathers are professional men—lawyers, physicians, business executives. Among the young people of college age, only 27 percent had professional aspirations. Thirty-five percent were engaged in unskilled work and had no other plans.

As so often happens in family issues, psychological factors and economic factors are commingled. Only a handful of young people in our study received financial support from their fathers past the age of 18. Considering the social class and economic circumstances of these men, and the family values, there is reason to suppose that a goodly number of these young people from middle class families would have received financial help during their college years as well as continued encouragement had the family remained intact.

High schools attended by our subjects report that an average of 85 percent of graduating students go on to a 2-year or a 4-year college program. Only 67 percent of the youngsters of college age in our study even entered college. Of these, one quarter dropped out soon after entry, all but one having received no financial aid from their fathers. Those who remained at school sometimes carried three jobs or alternated semesters of full-time work and full-time school. This unexpected finding of a downward economic and social trend, and a disadvantaging of a significant number of young people from divorced, middle class families if found to be widespread, has sobering implications for society.

Within a long-range perspective, the central hazards to the psychological health of the child are not the result of the divorce per se, for a conflict-ridden household or a lonely, depressed parent do not promote psychological health or moral development in children. The chief hazards lie in the diminished or disrupted parenting and continued household disorganization that can continue over many years, especially when the custodial parent is isolated and without recourse in the face of severe psychological and economic difficulties; in the broken or diminished relationship with the noncustodial parent and the unremitting feelings of rejection engendered in the child; in the parental conflict that can continue to dominate the family life following divorce, much as it did during the intact marriage; in the flawed or tragic role models provided by parents who fail to reconstitute their lives; in the diminished quality of life within the postdivorce family; in the multiple relocations and economic deprivation, especially when accompanied by a sense of injustice due to the wide discrepancy between the father's home and the mother's home; and in the curtailed educational or social opportunities for the children that represent the legacy of divorce in many postdivorce homes in our country. These hazards suggest specific remedies. Thank you.

[Prepared statement of Judith S. Wallerstein follows:]

PREPARED STATEMENT OF JUDITH S. WALLERSTEIN, PH.D., EXECUTIVE DIRECTOR, CENTER FOR THE FAMILY IN TRANSITION, CORTE MADERA, CA

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Since 1971 I have been Principal Investigator of the California Children of Divorce Project, which is the longest continuous study of children and parents in divorced families in the nation. This investigation has resulted in 43 articles in the professional literature, and a book entitled "Surviving the Breakup: How Children and Parents Cope with Divorce," by Judith S. Wallerstein, Ph.D., and Joan B. Kelly, Ph.D., published by Basic Books, Inc., in 1980.

I am a Visiting Senior Lecturer at the University of California at Berkeley in the School of Social Welfare.

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Based on a range of measures of psychological adjustment and social functioning in various domains (school, job, family and peer relationships), with due regard to age considerations, we found 43% of these young people to be functioning well, 15% to be uneven, and 42% to be functioning poorly. These findings are striking, because all of the younsters had been screened at the outset of the study to eliminate those showing psychological or learning difficulties prior to the divorce. Unlike our earlier findings that suggested a greater vulnerability of boys during the post-divorce years, we found at ten years no significant difference between the sexes in adjustment. Older adolescent girls, especially, suffered from low self-esteem, a sense of their own powerlessness, difficulty in making career commitments, and despair regarding their prospects for establishing lasting relationships. Their concerns about trust between men and women and their fears of repeating the tragic mistakes of their parents were intense. "I'm afraid to use the word love," said one 23-year-old woman. "You can hope that a relationship will last, but you can never expect it."

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As so often happens in family issues, psychological factors and economic factors are commingled. Only a handful of young people in our study received financial support from their fathers past the age of eighteen. Considering the social class and economic circumstances of these men, and the family values, there is reason to suppose that a goodly number of these young people would have received financial help during their college years as well as continued encouragement had the family remained intact. High schools attended by our subjects report that an average of 85% of graduating students go on to a two-year or a four-year college program. Only 67% of the youngsters of college age in our study entered college. Of these, one quarter dropped out soon after entry, all but one having received no financial aid from their fathers. Those who remained at school sometimes carried three jobs, or alternated semesters of full-time and full-time school. This unexpected finding of a downward economic and social trend, and a lifelong disadvantaging of a significant number of young people from divorced, middle class families, if found to be widespread, has sobering implications for society.

Within a long-range perspective, the central hazards to the psychological health of the child are not the result of the divorce per se, for a conflict-ridden household or a lonely, depressed parent do not promote psychological health or normal development in children. The chief hazards lie in the diminished or disrupted parenting and continued household disorganization that can continue over many years, especially when the custodial parent is isolated and without recourse in the face of severe psychological and economic difficulties; in the broken or diminished relationship with the non-custodial parent and the unremitting feelings of rejection engendered in the child; in the parental conflict that can continue to dominate the family life following divorce, much as it did during the intact marriage; in the flawed, or tragic role models provided by parents who fail to reconstitute their lives; in the diminished quality of life within the post-divorce family; in the multiple relocations and economic deprivation—especially when accompanied by a sense of injustice due to the wide discrepancy between the father's home and the mother's home; and in the curtailed educational or social opportunities for the children that represent the legacy of divorce in many post-divorce homes in our country. These hazards suggest specific remedies. I have time to note only my most salient recommendations in summary fashion.

First, and most important, families need access to specialized divorce services; these include counseling for the adults and the children, parent education and support groups, as well as a range of mediation services (to reduce the stress of the legal system on these already overstressed families), and special programs for subgroups such as parents of young children who have elected joint physical custody. They need these not only for a brief period at the time of crisis, but also as resources to be available as needed over the long span of the post-divorce years. A single, brief intervention, no matter how immediately helpful, will not suffice to maintain these families over the long haul. Unless periodically reinforced and monitored by regular followups, early intervention gains can evaporate. Adolescents are especially likely to turn to such familiar services at stressful times.

Secondly, these divorce-specific interventions must be supported by an array of human services for these families including, (a) adequate and just child support, paid regularly, and (b) quality child care, school and school support programs, as well as after-school programs for children and adolescents that will enhance their intellectual and emotional growth. School and the educational process often serve as the major stabilizing force in the lives of these youngsters.

Finally, for those families whose values and expectations include support of college years for their children, assurance reinforced by public policy is necessary that such support will be forthcoming on the same basis as if the family had remained intact.

Chairman **Miller**. Thank you. Mr. Brody.

STATEMENT OF GENE H. BRODY, CODIRECTOR, PROGRAM FOR THE STUDY OF COMPETENCE IN CHILDREN AND FAMILIES

Mr. **Brody**. Mr. Chairman and members of the Select Committee, I am Dr. Gene Brody, codirector of the program for the study of competence in children and families, which is affiliated with the Department of Child and Family Development at the University of Georgia. Our program is dedicated to the promotion of knowledge related to children and families, with particular emphasis on the social, psychological, and biological factors that foster or impede healthy development.

I appreciate the opportunity to present testimony on behalf of our research organization. My statement will focus on the variability in children's response to divorce, factors that are responsible for this variability, and our research that has examined the adjustment of adolescents to parental divorce.

Popular reports in the media as well as social stereotypes are likely to leave the public with the impression that marital separation must inevitably disrupt child development. Serious consideration of the social interactional processes by which divorce affects a child suggests that when certain conditions are met the separation of parents need not permanently impair children's social, emotional, or intellectual functioning. In fact, under certain circumstances, the dissolution of marriage may be in the child's best interests.

In considering the child's experience of and response to divorce and to life in a single-parent household, behavioral scientists are beginning to examine the interplay among the stresses that parents and children in such households encounter. However, wide variability remains in the quality and intensity of children's responses and adaptation to divorce. Some children exhibit severe or sustained disruptions in development, whereas others seem to negotiate a turbulent divorce and stressful aftermath and emerge as competent, well-functioning individuals. Thus, the negative effects of divorce on children are not inevitable. Rather, they appear to result from the compromise of parenting practices, following divorce It is not the divorce per se, but the divorce-related disruption of the parent-child relationship, that in turn disrupts child development.

The work of Prof. E. Mavis Hetherington and her associates reveals that divorce often, but not always, results in disorganized household functioning. In her sample of middle-class families with preschoolers, this disorganization was manifested among children in single-parent homes in less frequent meals with their mothers, irregular bedtimes, and late arrivals at school. Furthermore, divorce was followed by a breakdown in the mother's use of appropriate and consistent discipline, fewer demands for mature and independent behavior from the child, and less parent-child communication.

Significantly, it was primarily in those families in which household organization was disrupted, and in which the quality of parenting was severely undermined by the stress of divorce, that children displayed more behavior problems, anxiety, aggression, high distractibility, impulsiveness, and lack of persistence in tasks, all of which were associated with declines in intellectual abilities and social relationships over a 2-year period. However, children whose divorced mothers maintained consistent household routines, remained firm but sensitive disciplinarians, and encouraged independent, mature behavior, displayed few intellectual and social deficits as a result of the divorce experience.

In our own research program we have studied the effects of elevated levels of parental distress or depression and continuing conflict between the divorced parents on the adjustment of pre-adolescent children to divorce. Both of these variables are known to compromise parent-child relationships and forecast less competent child development outcomes. I will report briefly on three studies that were recently completed in collaboration with Professor Rex Forehand of the Center for Family Research of the Institute for Behavioral Research at the University of Georgia, who served as the principal investigator.

In study 1 we examined the relationship between depression in custodial mothers and a number of demographic stressor variables. Because stresses associated with downward economic mobility commonly confront children of divorce, we were especially interested in the custodial mothers' economic status. Each of the 126 custodial mothers in this study had experienced only one divorce and none had remarried.

Two variables, singly and in combination, were associated with depression in these mothers: socioeconomic status and number of children in the household. Simply, the less money these mothers had at their disposal, and the more children they had to rear, the more depressed they were. Depression in turn interferes with parents' ability to rear their children in a manner that forecasts competent child development. I should mention that the majority of these mothers were employed. However, they did not have the education, job skills or experience to enable them to obtain a well-paying position or to pay for high quality day care.

Study 2 was designed to examine the influence of variations in custodial mothers' depression levels and ongoing conflict between divorced parents on the adjustment of young adolescents. Adolescent adjustment was assessed both from the adolescent's own perspective and via objective assessments at his or her school. Higher levels of depression among custodial mothers were associated with lower grade point averages, higher levels of depression and anxiety, and more health problems, among the adolescents.

Ongoing parental conflict was associated with poorer school performance, lower grades, less social competence with peers, more behavior problems at school, and self-perceptions that they were less intelligent and popular than their classmates. Importantly, the results of this study also indicate that when custodial mothers were not depressed and harmonious relations existed between the ex-spouses following divorce, adolescents functioned competently at school and perceived themselves to be academically and socially capable.

The purpose of study 3 was to compare the functioning of young adolescents who resided in nondivorced and single-parent households. Half of the adolescents in each type of household were exposed to high levels of conflict between parents, and half were exposed to lower levels. Again, adjustment was assessed both from the adolescent's perspective and via objective assessments at his or her school.

The objective assessments of the adolescents' school performance and social competencies were influenced by parental conflict, and not by the parents' marital status. Whether the adolescent resided with one or two parents, better intellectual and social performance resulted if they were exposed to lower levels of parental conflict. Recent divorce, however, was associated with self-perceptions of incompetence. Any long-term effects on actual competence that may take place cannot be determined from the present results. It is, however, important to note that detrimental effects may result if the adolescent continues to perceive himself or herself as incompetent.

In closing, most children and adolescents experience divorce as a difficult transition, and life in a single-parent family can be viewed as a high risk situation for parents and children. This is not to say that single-parent families cannot or do not serve as effective settings for the development of competent youth, but the additional stresses and the lack of support systems confronted by divorced families impose additional burdens on their members. Unfortunately, for most children and youth, these stresses result in a less than optimum family life that often includes parental depression and conflict, which in turn negatively influence their development.

Chairman MILLER. Thank you. We have a vote on the floor, so we are going to recess for a couple of minutes to allow members to go vote. When we come back, we will start with Dr. Kalter.

[Recess.]

Chairman MILLER. The committee will reconvene. Dr. Brody, please proceed in the manner in which you are most comfortable.

Mr. BRODY. Thank you. I have finished my statement.

[Prepared statement of Gene H. Brody follows:]

PREPARED STATEMENT OF GENE H. BRODY, PH.D., PROGRAM FOR THE STUDY OF COMPETENCE IN CHILDREN AND FAMILIES, DEPARTMENT OF CHILD AND FAMILY DEVELOPMENT, UNIVERSITY OF GEORGIA

Mr. Chairman and members of the Select Committee, I am Dr. Gene Brody, co-director of the Program for the Study of Competence in Children and Families, which is affiliated with the Department of Child and Family Development at the University of Georgia. Our program is dedicated to the promotion of knowledge related to children and families, with particular emphasis on the social, psychological, and biological factors that foster or impede healthy development.

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In our own research program we have studied the effects of elevated levels of parental distress or depression and continuing conflict between the divorced parents on the adjustment of preadolescent children to divorce. Both of these variables are known to compromise parent-child relationships and forecast less competent child development outcomes. I will report briefly on three studies that were recently completed in collaboration with Professor Rex

Forehand of the Center for Family Research of the Institute for Behavioral Research at the University of Georgia, who served as the Principal Investigator.

In Study 1 we examined the relationship between depression in custodial mothers and a number of demographic stressor variables. Because stresses associated with downward economic mobility commonly confront children of divorce, we were especially interested in the custodial mothers' economic status. Each of the 126 custodial mothers in this study had experienced only one divorce and none had remarried. Two variables, singly and in combination, were associated with depression in these mothers: socioeconomic status and number of children in the household. The less money these mothers had at their disposal and the more children they had to rear, the more depressed they were. Depression in turn interferes with parents' ability to rear their children in a manner that forecasts competent child development. I should mention that the majority of these mothers were employed; however, they did not have the education, job skills, or experience to enable them to obtain a well-paying position or to pay for high quality child care.

Study 2 was designed to examine the influence of variations in custodial mothers' depression levels and ongoing conflict between divorced parents on the adjustment of young adolescents. Adolescent adjustment was assessed both from the adolescent's own perspective and via objective assessments at his or her school. Higher levels of depression among custodial mothers were associated with lower grade point averages, higher levels of depression and anxiety, and more health problems, among the adolescents. Ongoing parental conflict was associated with poorer school performance, lower grades, less social competence with peers, more behavior problems at school, and self-perceptions that they were less intelligent and popular than their classmates. Importantly, the results of this study also indicate that when custodial mothers were not depressed and harmonious relations existed between the ex-spouses following divorce, adolescents functioned competently at school and perceived themselves to be academically and socially capable.

The purpose of Study 3 was to compare the functioning of young adolescents who resided in non-divorced and single-parent households. Half of the adolescents in each type of household were exposed to high levels of conflict between parents, and half were exposed to lower levels. Again, adjustment was assessed both from the adolescent's perspective and via objective assessments at his or her school. The objective assessments of the adolescents' school performance and social competencies were influenced by parental conflict, and not by the parents' marital status. Whether the adolescent resided with one or two parents, better intellectual and social performance resulted if they were exposed to lower levels of parental conflict. Recent divorce, however, was associated with self-perceptions of incompetence. Any long-term effects on actual competence that may take place can not be determined from the present results; it is, however, important to note that detrimental effects may result if the adolescent continues to perceive himself or herself as incompetent.

In closing, most children and adolescents experience divorce as a difficult transition, and life in a single-parent family can be viewed as a high risk situation for parents and children. This is not to say that single-parent families cannot or do not serve as effective settings for the development of competent youth, but the additional stresses and the lack of support systems confronted by divorced families impose additional burdens on their members. Unfortunately, for most children and youth, these stresses result in a less than optimum family life that often includes parental depression and conflict, which in turn negatively influence their development.

Chairman **Miller**. Excuse me, I'm sorry. Dr. Kalter.

STATEMENT OF NEIL KALTER, ASSOCIATE PROFESSOR, DEPARTMENTS OF PSYCHOLOGY AND PSYCHIATRY, UNIVERSITY OF MICHIGAN, ANN ARBOR

Mr. **Kalter**. Thank you. Mr. Chairman, members of this congressional select committee and ladies and gentlemen; I appreciate the opportunity to share with you today our findings regarding the impact of marital disruption on children and aspects of our preventive intervention program for these youngsters.

For the past 10 years the family styles project at the University of Michigan has been studying the effects of divorce, child rearing in single-parent households, and remarriage on the lives of children. Our research has included over 500 children referred for psychological services, nearly 200 children drawn from the general population of elementary school youngsters, and approximately 400 children who have participated in our preventive intervention program.

The results of our research, and a distillation of the work done by others, have led us to conclude that divorce represents a series of life changes which are highly stressful and disruptive for the great majority of children. Most children respond, initially, with upset and distress. However, if this painful condition were primarily self-limiting in nature, so that nearly all youngsters would regain their developmental stride relatively quickly, there would not be cause for alarm. Instead our energies could be devoted exclusively to finding ways to make the transition to a postdivorce family situation less upsetting and less disruptive to the lives of the children.

While we agree that the period surrounding the initial parental separation often is highly stressful for children, we have become increasingly impressed with the postdivorce, long-term stresses which confront a child whose parents divorce. Among the most powerful stressors ~~are~~ downward economic mobility and all too often poverty, frequent shifts in residence, continued hostility between parents, infrequent or near total lack of contact with the nonresident parent, parent dating, and remarriage. These postdivorce stresses, rather than the turmoil at the time of divorce, are likely to be the key factors producing long-term negative reactions for many children of divorce.

With this perspective we have evolved a developmental vulnerability model to describe and understand the differences in life trajectories among children whose parents divorce. Clearly, many youngsters fare well after divorce. Based on our work in Michigan it appears that over half and perhaps as many as two-thirds are able to continue on a path of successful social, emotional, and cognitive development after the initial period of disruption at the time of the parental separation.

The remainder continue to struggle, at times well, at other times maladaptively, with conflicts engendered and sustained by postdivorce stresses. Divorce does not lead inexorably to poor child adjustment. It does, however, set in motion a host of difficult, emotionally charged events, and relationships which represent an added burden to a child's already full developmental agenda.

In the time I have remaining, I would like to tell you about our preventive intervention program. It is a time-limited group model which is conducted at elementary schools once per week for 8 weeks. Each group consists of between five and eight youngsters and two adult group leaders, one male and one female. We accept any child whose divorced custodial parent has read our project description and then consented, in writing, to the child's participation.

Some of our group members' parents had been separated within weeks of the child beginning a group, but many were several years beyond the point of the divorce. The majority were in single-parent households, usually in their mother's custody, but a substantial proportion were living in remarried families. About 20 percent of our group members had been in what their parents described as a failed mental health intervention, and another 10 percent or so were currently in some form of mental health treatment. Nearly three-quarters of the children came from households that would be characterized as either lower middle, middle, or upper middle class with the remaining quarter split between lower class and upper class. Some of the schools are located in rural areas, others are suburban.

The overall goal of our intervention is to reduce the incidence and severity of problems which have been associated with parental divorce for some children. These include: low self-esteem, poor academic performance, depression, and difficulties managing their impulses. The mechanisms for accomplishing this goal can be stated in four specific aims.

First, we seek to normalize the sense of being a child of divorce; remove the stigma. Second, we strive to clarify divorce-related concerns and questions. Third, we attempt to provide a safe and private place where children can experience and come to terms with emotionally painful and conflicted aspects of divorce and its aftermath. Fourth, and finally, we try to promote the development of coping skills to manage both troublesome feelings and difficult family interactions.

While the thrust of our intervention is to prevent the emergence of divorce-engendered problems, and to initiate corrective forces where problems already exist, the group sessions additionally provide a new window on the feelings and thoughts children have after their parents divorce. What has been so striking is the degree to which painful feelings and powerful conflicts continue for children even years after the divorce. And the children made it abundantly clear that it was postdivorce issues which fueled these feelings.

Fear and anger over continued hostilities between parents, sadness over little or no contact with the nonresident parent, loyalty conflicts over which parent to side with, forbidden excitement and competition stimulated by parent dating, rage over having a parent's live-in partner or new spouse begin to assign chores or engage in discipline, and competition toward and uncertainty over how to relate to new step or half siblings all were palpably in evidence. It appears that the legacy of parental divorce can be long and difficult for many children.

At the same time that we are so impressed by the array of conflicts with which our group members were struggling, we are encouraged by their response to our intervention. With our model we were able to permit children to do what youngsters rarely are able to do; namely, to express themselves directly, in the presence of adults and peers, about intensely private and centrally important feelings, questions and concerns. For most of these children it was the very first time they had expressed so directly and so adaptively their divorce related concerns. Equally important is the fact that for nearly all children it was the first time that they had ever heard another youngster express shared concerns so honestly and poignantly.

The relief felt by many has been apparent. Teachers and parents tell us and preliminary results of systematic testing indicate that our intervention can significantly reduce aggression and depression, enhance self-esteem, and increase understanding of what is normal and all right for children to experience after divorce.

At this time we have been able to demonstrate this effectiveness 6 months after participation in a group. Whether these salutory effects continue or more likely, whether additional interventions, booster shots if you will, are needed has not yet been determined. But we believe that we and our young group members have made a good start. Thank you.

PREPARED STATEMENT OF NEIL KALTER, PH.D., ASSOCIATE PROFESSOR, DEPARTMENTS OF PSYCHOLOGY AND PSYCHIATRY, UNIVERSITY OF MICHIGAN

Mr. Chairman, Members of this Congressional Select Committee and ladies and gentlemen; I appreciate the opportunity to share with you today our findings regarding the impact of marital disruption on children and aspects of our preventive intervention program for these youngsters.

I would like to preface my remarks by noting how very new the inquiry into the effects of divorce on children is. Due to the recency of the dramatic rise in this country's divorce rate, most clinical and empirical research in this area is barely a decade old. It is, therefore, difficult to forecast with a high degree of accuracy what the long-term implications of divorce will be, for the individuals and families involved and for the fabric of our society.

For the past ten years the Family Styles Project at the University of Michigan has been studying the effects of divorce, child-rearing in single-parent households, and remarriage on the lives of children. Our research has included over 500 children referred for psychological services, nearly 200 children drawn from the general population of elementary school youngsters, and approximately 400 children who have participated in our preventive intervention program. Since these samples are relatively small due to the in-depth nature of our research, and because all youngsters have resided in southeastern Michigan, our inferences are necessarily restricted. However, we do have the full range of socioeconomic conditions represented in our work, and we have used both standard, reliable tests and extensive contacts with children in our efforts to understand how children perceive, understand, feel about and react to their parents' divorce.

The results of our research, and a distillation of the work done by others, have led us to conclude that divorce represents a series of life changes which are highly stressful and disruptive for the great majority of children. Most children respond, initially, with upset and distress. However, if this painful condition were primarily self-limiting in nature, so that nearly all youngsters would regain their developmental stride relatively quickly, there would not be cause for alarm. Instead our energies could be devoted exclusively to findings ways to make the transition to a post-divorce family situation less upsetting and less disruptive to the lives of the children.

While we agree that the period surrounding the initial parental separation often is highly stressful for children, we have become increasingly impressed with the post-divorce, long-term stresses which confront a child whose parents divorce. Among the most powerful stressors are downward economic mobility and all too often poverty, frequent shifts in residence, continued hostility between parents, infrequent or near total lack of contact with the non-resident parent, parent dating and remarriage. These post-divorce stresses, rather than the turmoil at the time of divorce, are likely to be the key factors producing long-term negative reactions for many children of divorce.

With this perspective we have evolved a developmental vulnerability model to describe and understand the differences in life trajectories among children whose parents divorce. Clearly, many youngsters fare well after divorce. Based on our work in Michigan it appears that over half and perhaps as many as two-thirds are able to continue on a path of successful social, emotional and cognitive development after the initial period of disruption at the time of the parental separation. The remainder continue to struggle, at times well, at other times maladaptively, with conflicts engendered and sustained by post-divorce stresses. Divorce does not lead inexorably to poor child adjustment; it does, however, set in motion a host of difficult, emotionally charged events and relationships which represent an added burden to a child's already full developmental agenda.

In the time I have remaining, I would like to tell you about our preventive intervention program. It is a time-limited group model which is conducted at elementary schools once per week for eight weeks. Each group consists of between five and eight youngsters and two adult group leaders, one male and one female. We do not screen out any child whose divorced custodial parent has read our project description and then consented, in writing, to the child's participation. Some of our group members' parents had been separated within weeks of the child beginning a group, but many were several years beyond the point of the divorce. The majority were in single-parent households, usually in their mother's custody, but a substantial proportion were living in remarried families. About 20 percent of our group members had been in what their parents described as a failed mental health intervention (individual therapy/counseling or family therapy) and another 10 percent or so were currently in some form of mental health treatment. Nearly three quarters of the children came from households that would be characterized as either lower-middle, middle or upper-middle-class with the remaining quarter split between lower-class and upper-class. Some of the schools are located in rural areas, other are suburban.

The overall goal of our intervention is to reduce the incidence and severity of problems which have been associated with parental divorce for some children. These include: low self-esteem, poor academic performance, depression, and difficulties managing their impulses. The mechanisms for accomplishing this goal can be stated in four specific aims. First, we seek to normalize the sense of being a child of divorce. Second, we strive to clarify divorce related concerns and questions. Third, we attempt to provide a safe and private place where children can experience and come to terms with emotionally painful and conflected aspects of divorce and its aftermath. Fourth, and finally, we try to promote the development of coping skills to manage both troublesome feelings and difficult family interactions.

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At this time we have been able to demonstrate this effectiveness six months after participation in a group. Whether these salutory effects continue, or whether additional interventions, "booster shots" if you will, are needed has not yet been determined. But we believe that we and our young group members have made a good start.

Chairman MILLER. Thank you. Next we will hear from Nancy Polikoff. Again, your statement will be put in the record, and to the extent you can summarize, we would appreciate it.

STATEMENT OF NANCY D. POLIKOFF, DIRECTOR, CHILD CUSTODY AND CHILD SUPPORT PROJECTS, WOMEN'S LEGAL DEFENSE FUND, AND ADJUNCT PROFESSOR OF FAMILY LAW, WASHINGTON COLLEGE OF LAW, AMERICAN UNIVERSITY, WASHINGTON, DC

Ms. POLIKOFF. Chairman Miller and members of the House Select Committee, my name is Nancy Polikoff. I am a staff attorney with the Women's Legal Defense Fund, a nonprofit, public interest membership organization dedicated to achieving women's rights under the law. WLDF counsels thousands of women a year with family law problems. As director of WLDF's Child Custody and Child Support Projects for the past 4 years, I have been observing judicial trends in determination of child custody awards. My observations are startling.

For most of history, children were considered the property of their fathers, and separation or divorce resulted automatically in custody to the father. After industrialization and compulsory education laws made children an economic liability rather than an economic benefit, and as psychological theory established the needs of children for nurturing, the law developed a rule during this century that custody of young children, those of tender years, would be awarded to the mother.

Beginning about 1970, this maternal tender years presumption was eliminated State by State and was replaced by a sex-neutral best interests of the child standard. The sex-neutral standard held the promise of breaking down sex stereotypes that maintained that women's principal role in society was responsibility for the care of young children. It promised equity for those fathers who were actually engaged in primary childrearing in their families.

Unfortunately, in application, this sex-neutral standard has actually incorporated sex discriminatory principles, to the detriment of women and children. Judges often believe that equality means wiping the slate clean, looking to the future rather than the past, and thereby ignoring facts concerning childrearing during the ongoing marriage. Failure to consider which parent has been primarily responsible for caring for the children both ignores the significance to the children of the bond created by such care and devalues the work of childrearing in the home.

Instead of looking at the history of child care in the family, judges are influenced by a number of inappropriate factors. They consider, for example, which parent can provide greater material benefits to the children, a factor which almost always favors fathers, precisely because mothers are likely to have been the primary caretakers of the children.

Furthermore, fathers can actually exacerbate financial disparity by refusing to pay adequate child support. Welfare mothers are particularly vulnerable, as judges view the receipt of welfare as the mother's failing, even if the father has never provided any support to the children or any reimbursement to the State. Ironically, judges also penalize mothers who actively pursue career advancement, claiming that this demonstrates their lack of commitment to childrearing. No such judgments are made about ambitious fathers.

Fathers who perform a tiny percentage of childrearing tasks, such as changing one diaper a day, are rewarded because they appear to have embraced responsibility for care of their children, while mothers who share this tiny percentage with their husbands are penalized as inadequate because they appear unwilling to devote themselves entirely to motherhood.

Mothers who return to school or change to fulltime employment because divorce inevitably requires that they become economically self-sufficient are penalized by judges who believe they are unstable.

Mothers who flee for their lives from physically abusive husbands face allegations that they have abandoned their children and face a persistent unwillingness of judges to understand that a history of wife abuse is relevant to the best interests of the child, and that batterers should not be awarded custody.

In spite of studies at last uncovering the prevalence of child sexual abuse within the family, mothers who act to protect their children from such abuse by the father find that they are on trial themselves by a judiciary that would often prefer to believe that mothers make false allegations than that the abuse occurs.

Fathers also gain advantages after remarriage as judges refer to a preference for a two-parent family and a belief that a stepmother will fulfill the maternal function, as though caring for children was a set of tasks rather than a relationship, and as though mothers were fungible and one woman would do as well as any other woman in raising any given set of children.

I wish to stress that these are trends and not isolated instances. Fathers are winning custody in about 50 percent of all contested cases for these kinds of reasons, not because they have been primary or even equal caretakers of their children during the marriage.

The impact of these developments extends far beyond those small percentages of custody cares decided in court. The seriousness with which every mother must take a threat to contest custody has resulted in a climate of fear in which mothers routinely agree to forfeit alimony or equitable property division, to accept minimal child support, or to forego court actions to modify or enforce child support, in order to avoid both the risk of losing custody in court and the exorbitant expenses of litigation. Any concern for the devastating economic consequences of divorce on women and children must recognize that greater financial entitlement for women and children will be useless if the climate of negotiation encourages mothers to trade away economic benefits in order to retain custody of their children.

Development of sound public policy concerning child custody and child support has been muddied by the claim that States should mandate a presumption of joint custody for all children of divorce. This approach is alleged to have three justifications: it will supposedly compensate for discrimination against fathers; it will supposedly serve the best interests of children by providing frequent contact with both parents; and it will supposedly eliminate the problems of inadequate and unpaid child support.

The first justification can be easily dispensed with. As my earlier testimony recites, fathers are no longer discriminated against in custody disputes. The second justification purports to be based on the best interests of the children. Although children do generally benefit from continuing contact with both parents, this clinical finding does not support a presumption of joint custody. I defer on this point to the psychological experts at the table with me.

Children can and do maintain frequent and continuing contact with both parents regardless of the label attached to their custodial arrangement and the presumptive designation of joint custody cannot create effective coparenting or optimal conditions for children.

Finally, joint custody is not the answer to the national tragedy of noncompliance with child support awards. Research has consistently demonstrated that child support noncompliance results from the decisions of noncustodial parents to spend their money elsewhere and the lack of effective enforcement mechanisms in our courts and agencies. There has only been one study of child support payment patters under joint custody that held constant such key factors as employment status, remarriage and actual amount of time spent with the child, as opposed to the custodial label. This study found that joint residential custody was not a predictor at all of child support compliance.

In closing, I would stress the necessity for reform of child custody laws to insure that the work of primary caretaking of children within the marriage is properly valued and that joint custody is awarded only when the requisite family characteristics are present and the parents are both committed to the arrangement. Such policies would also minimize the ability of fathers to practice custody blackmail to the severe eoconomic detriment of mothers and children.

[Prepared statement of Nancy D. Polikoff follows:]

PREPARED STATEMENT OF NANCY D. POLIKOFF, ESQ., DIRECTOR, CHILD CUSTODY AND CHILD SUPPORT PROJECTS, WOMEN'S LEGAL DEFENSE FUND

Chairman Miller and members of the House Select Committee on Children, Youth, and Families, my name is Nancy Polikoff. I am a staff attorney with the Women's Legal Defense Fund, a non-profit, public interest membership organization dedicated to achieving women's rights under the law. WLDF counsels thousands of women a year with family law problems. As director of WLDF's Child Custody and Child Support Projects for the past four years, I have been observing judicial trends in determination of child custody awards. My observations are startling.

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Beginning about 1970, this maternal tender years presumption was eliminated state-by-state and was replaced by a sex-neutral "best interests of the child" standard. The sex-neutral standard held the promise of breaking down sex stereotypes that maintained that women's principal role in society was responsibility for the care of young children. It promised equity for those fathers who were actually engaged in primary childbearing in their families.

Unfortunately, in application, this sex-neutral standard has actually incorporated sex discriminatory principles, to the detriment of women and children. Judges often believe that equality means wiping the slate clean, looking to the future rather than the past, and thereby ignoring facts concerning childbearing during the ongoing marriage. Failure to consider which parent has been primarily responsible for caring for the children both ignores the significance to the children of the bond created by such care and devalues the work of childrearing in the home.

Instead of looking at the history of childcare in the family, judges are influenced by a number of inappropriate factors. They consider, for example, which parent can provide greater material benefits to the children, a factor which almost always favors fathers, precisely because mothers are likely to have been the primary caretakes of the children. Furthermore, fathers can actually exacerbate financial disparity by refusing to pay adequate child support. Welfare mothers are particularly vulnerable, as judges view the receipt of welfare as the mother's failing, even if the father has never provided any support to the children or any realignment to the state. Ironically, judges also penalize mothers who actively pursue career advancement, claiming that this demonstrates their lack of commitment to childrearing. No such judgments are made about ambitious fathers.

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Mothers who flee for their lives from physically abusive husbands face allegations that they have abandoned their children and face a persistent unwillingness of judges to understand that a history of wife abuse is relevant to the best interests of the child, and that batterers should not be awarded custody.

In spite of studies at last uncovering the prevalence of child sexual abuse within the family, mothers who act to protect their children from such abuse by the father find that they are on trial themselves by a judiciary that would often prefer to believe that mothers make false allegations than that the abuse occurs.

After the divorce, fathers who remarry gain enormous advantage in obtaining custody, as judges refer both to a preference for a two parent home and a belief that the stepmother will fulfill the maternal function—as though caring for children was a set of tasks rather than a relationship—and as though mothers were fungible and one woman would do as well as any other woman in raising any given set of children.

I wish to stress that these are trends, not isolated instances. Fathers are winning custody in about 50 percent of all contested cases for these kinds of reasons—NOT because they have been primary or even equal caretakers of their children during the marriage.

The impact of these developments extends far beyond those small percentages of custody cases decided in court. The seriousness with which every mother must take a threat to contest custody has resulted in a climate of fear in which mothers routinely agree to forfeit alimony or equitable property division, to accept minimal child support, or to forego court actions to modify or enforce child support, in order to avoid both the risk of losing custody in court and the exorbitant expenses of litigation. Any concern for the devastating economic consequences of divorce on women and children must recognize that greater financial entitlement for women and children will be useless if the climate of negotiation encourages mothers to trade away economic benefits in order to retain custody of their children.

Development of sound public policy concerning child custody and child support has been muddied by the claim that states should mandate a presumption of joint custody for all children of divorce. This approach is alleged to have three justifications: 1) it will supposedly compensate for discrimination against fathers; 2) it will supposedly serve the best interests of children by providing frequent contact with both parents; and 3) it will supposedly eliminate the problems of inadequate and unpaid child support.

The first justification can be easily dispensed with. As my earlier testimony recites, fathers are no longer discriminated against in custody disputes.

The second justification purports to be based on the best interests of the children. Although children do generally benefit from continuing contact with both parents, this clinical finding does not support a presumption of joint custody. I defer on this point to the expertise of Dr. Judith Wallerstein who has categorically opposed creating joint custody presumptions and who has deplored the misuse of her research and that of others in support of such a policy. I will simply note that to serve the best interests of children, joint custody must be an affirmative choice based on the presence of certain parental characteristics, such as ability to communicate and cooperate, flexibility, and ability to empathize with the point of view of the child and the other parent, and the absence of contraindicating characteristics, such as intense, continuing hospitality, overwhelming anger, history of spouse abuse, and fixed belief that the other is a bad parent. Children can and do maintain frequent and continuing contact with both parents regardless of the label attached to their custodial arrangement, and the presumptive designation of joint custody cannot create effective co-parenting or optimal conditions for children.

Finally, joint custody is not the answer to the national tragedy of non-compliance with child support awards. Research has consistently demonstrated that child support non-compliance results from the decisions of non-custodial parents to spend their money elsewhere and the lack of effective enforcement mechanisms in our courts and agencies. Although it has been alleged that fathers do not pay support because they are denied adequate visitation with their children, every study of the subject has demonstrated that mothers do not withhold visitation, but, rather, that they want fathers to spend more, not less, time with their children. Visitation complaints form a convenient and sympathetic sounding excuse for non-payment, but they are not its root cause.

Furthermore, there has been only one study of child support payment patterns under joint custody that held constant such key factors as employment status, remarriage, and actual amount of time spent with the child (as opposed to custodial label). This study found that joint residential custody was not a predictor at all of child support compliance.

In closing, I would stress the necessity for reform of child custody laws to insure that the work of primary caretaking of children within the marriage is properly valued and that joint custody is awarded only when the requisite family characteristics are present and the parents are both committed to the arrangement. Such policies would also minimize the ability of fathers to practice "custody blackmail" to the severe economic detriment of mothers and children If as a society we value the work of nurturing and caring for children within families, we must recognize that value through custody determinations which preserve the bond such nurturance creates. Congress has already acted to improve the post-divorce lives of children by enacting the Child Support Enforcement Amendments of 1984. Implementation of the enforcement mechanisms of the law by the states and development of appropriate guidelines for determining amounts of child support are critical tasks for the states in the coming year. We appreciate the interests of this committee in overseeing that process as well as your concerns for both the emotional and financial needs of children of divorce.

Attachments to the Testimony of Nancy D. Polikoff, Women's Legal Defense Fund

NATIONAL OPPOSITION TO COURT-IMPOSED JOINT CUSTODY LAWS

Testimony from around the country in opposition to joint custody legislation that would permit courts to impose this custodial arrangement on unwilling families, 1980 to 1986;

From:
- California
- Colorado
- District of Columbia
- Florida
- Maryland
- New Jersey
- New Mexico
- New York
- Oregon
- Virginia
- Washington

Testimony by:
- Attorneys
- State Bar Associations
- Battered Women's shelter programs and advocates
- Child psychologists and psychiatristis
- Displaced Homemaker organizations
- Educators
- Governors of New Mexico, New York, Oregon
- Judges and former judges
- Legal Services attorneys and advocates for the poor
- Mental health clinicians and agencies
- National Organization for Women and leading feminists
- Parents -- fathers and mothers
- Pediatricians
- Psychiatrists and psychologists
- Social Workers
- State Commissions on the Status of Women
- State Legislators
- Women's legal rights organizations
- Women's political organizations

NATIONAL OPPOSITION TO COURT-IMPOSED JOINT CUSTODY LAWS

Testimony in opposition to joint custody legislation that would permit courts to impose this custodial arrangement on unwilling families, 1980 to 1986. (Copies maintained in Select Committee on Children, Youth, and Families offices.)

FROM: CALIFORNIA

REED, Ann, Founder/Coordinator, California Committee For Mother and Child Rights, San Rafael; letter to Senator Barry Keene, Chairman, Senate Judiciary Committee, Sacramento, March 24, 1983

STEINMAN, Susan, DSW, Director, Joint Custody Study Project, Jewish Family & Children's Services, San Francisco; letter to Elihu M. Harris, Chairman, Assembly Committee on Judiciary, Sacramento, October 14, 1981

WALLERSTEIN, Judith, Ph.D., Executive Director, Center for Family in Transition, Corte Madera; letter to Elihu Harris, Chairperson, Assembly Judiciary Committee, Sacramento, May 7, 1981

FROM: COLORADO

CLINE, Foster W., M.D., Director, The Suites of Evergreen Consultants in Human Behavior, Evergreen; letter to Ms. Brenda Dempsey, April 6, 1983

FROM: DISTRICT OF COLUMBIA

WOMEN'S LEGAL DEFENSE FUND, Washington, DC; Section-by-Section Analysis of Proposed Joint Child Custody Act of 1985

POLIKOFF, Nancy D., Staff Attorney and Project Director, Child Custody Project, Women's Legal Defense Fund, Washington, DC; Preliminary Analysis of Bill 4-424

FROM: FLORIDA

HIRSCH, Amy, Staff Attorney, Jacksonville Area Legal Aid, Jacksonville; article "New Florida Legislation Provides Protection for Battered Women and Their Children in Custody Cases", from *The Women's Advocate* newsletter of The National Center on Women and Family Law

FROM: MARYLAND

POLIKOFF, Nancy D., Staff Attorney, Women's Legal Defense Fund, Washington, DC; testimony in Opposition to HB 884 and HB 810, February 13, 1986; testimony on HB 501, 753, and 1116-Joint Custody before the Judiciary Committee of Maryland State House of Delegates

WYATT, Martha, Chair, The Maryland Commission for Women, Baltimore; testimony on SB 663 before the Maryland Judicial Proceedings Committee, March 9, 1983

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LUEPNITZ, Deborah Anna, Ph.D., Clinical Psychologist, Philadelphia Child Guidance Clinic, Philadelphia, PA; letter to Stanley Fink, Assembly Speaker, Albany, June 3, 1985
CHESLER, Phyllis, Ph.D., Brooklyn; letter to Stanley Fink, Assembly Speaker, Albany, May 24, 1985
POGREBIN, Letty Cotton, Ms. Magazine, New York City; letter to Legislator, May 28, 1986
JONG, Erica, New York City; letter to Assembly members, May 27 1986
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BELSCHNER, Betty L., Director/Counselor, Displaced Homemaker Center of WNY, Niagara Falls; letter to Senator John Daly, Niagra Falls, NY, May 27, 1986
COLE, Eleanor, Middletown; letter to Legislator, June 1, 1986
MILLER, Barbara C., Middletown; letter to Legislator, May 28, 1986
PULMAN, Karen; letter to Legislator, May 26, 1986

FROM: OREGON
LETTER to Legislator, May 20, 1986, signed by:
- PHIL, Holger M., Judge, Circuit Court of Oregon, Washington County
- JOHNSON, Lee, Judge, Circuit Court of Oregon, Multnomah County
- DEIZ, Mercedes F., Judge, Circuit Court of Order, Multnamah County
- TANZER, Jacob, J.D., Attorney at Law, Portland
- LEWIS, Jean, Senior Judge, Multnomah County
- LENON, Harlow F., Retired Circuit Court Judge, Portland
- FREY, Gerald A., Chair, Legislative Committee, Oregon Chapter, National Association of Social Workers
- BOVERMAN, Harold M.D., President, Oregon Council of Child Psychiatry
- SACK, William H., M.D., Director, Dept. of Child Psychiatry, Oregon Health Sciences University, Portland
- MILLER, Don A., State Director, Boys and Girls Aid Society of Oregon, Portland
- WOODCOCK, Herbert M., M.D., Associate Professor of Psychiatry and Pediatrics, Oregon Health Sciences Univearsity, Portland
- LABBY, Daniel H., Professor of Psychiatry and Medicine, Oregon Health Sciences University, Portland
- HAIGHT, Frank W., Principal, Arleta Elementary School, Portland
- McCALL, Dan, Principal, Clark Elementary School, Portland
- POGANO, Don F., Ph.D., Clinical Psychologist, Portland
- LOHMAN, Anita A., Ph.D., Clinical Psychologist, Portland
- GAETJENS, Catherine G., M.S.W., R.C.S.W., Clinical Director, Center for Community Mental Health, Portland
- HALL, Kelly A., M.S.W., R.C.S.W., Clinical Social Worker, Dept. of Child and Adolescent Psychiatry, Oregon Health Sciences University, Portland

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MENDELSON, Robert A., M.D., Pediatrician, Portland
FISCHER, Jean, M.A., School Psychologist, Portland
ROBERTS, Susan, M.A., School Psychologist, Portland
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TURNER, David A., M.D., Psychiatrist, Portland
SPONSLER, Thomas, Attorney at Law, Portland
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POWELL, Alice Karlin, MSW, Child and Adult Therapist, Portland
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NORMAN, Jennie S., MSW, RCSW, Clinical Social Worker, Portland
KLING, Jacquelyn, MS, Child and Adult Therapist, Portland
GRANT, Cheryn, D.O., Child Psychiatrist, Portland
SPONSLER, Virginia M., MSW, RCSW, Portland
BAUR, Karla M., MSW, RCSW, Portland
STATZ, Jayne, MSW, RSCW, Clinical Social Worker, Portland
KRESSEL, Eileen Nolan, MSW, RCSW, Clinical Social Worker, Portland
TURNER, Carol F., MSW, RCSW, Clinical Social Worker, PSU Student Health Center, Portland
BEAHRS, Claudette Hastie, MSW, RCSW, Clinical Social Worker, Portland
BORDNER, Barbara E., MSW, RCSW, Family Clinical Social Worker, Portland
ANGELL, Richard, M.D., Child Psychiatrist, Portland
HALVORSEN, Karen M., Chairperson, Board of Directors, Metropolitan Family Service, Portland

THOMAS, Steve, Pilot Rock, letter To The Editor, Oregonian, June 26, 1985
ATIYEH, Victor, Governor, Salem; letter to Hon. Norma Paulus, Secretary of State, Salem, July 29, 1983
SACK, William H., M.D., The Oregon Health Sciences University, Portland; letter to Honorable Victor Atiyeh, Governor of Oregon, Salem, July 6, 1983
BURK, R. Patrick, Ph.D., President, Portland Elementary School Principals Association; letter to Honorable Victor Atiyeh, Governor of Oregon, Salem, July 11, 1983
SPONSLER, Virginia, ACSW, Portland; letter to Portland House Judiciary Committee, Salem, June 27, 1983
SHEPARD, Stephen J.R., Attorney at Law, Eugene; letter to Honorable Victor Atiyeh, Governor of Oregon, Salem, July 13, 1983
LABBY, Daniel H., M.D., Professor of Psychiatry and Medicine, The Oregon Health Sciences University, Portland; letter to Governor Victor Atiyeh, Salem, July 6, 1983

LABBY, Margaret, MSW, RCSW, Portland; letter to Governor Victor Atiyeh, Salem, July 6, 1983

THOMAS, Susan, MSW, Portland; letter to Honorable Victor Atiyeh, Governor of Oregon, Salem, July 10, 1983

KOSTERLITZ, Nancy, M.S.W., Portland; letter to Governor Atiyeh, Salem, July 7, 1983

BYBEE, Rex, President, Board of Directors; SELLING, Maxine, Family Advocate, Metropolitan Family Service, Portland; letter to Honorable Victor G. Atiyeh, Governor, State of Oregon, Salem, July 12, 1983

CLIFFORD, Mary, ACSW, Clinical Social Worker, Portland; letter to Governor Atiyeh, State of Oregon, Salem, July 5, 1983

BEAHRS, Claudette Hastie, MSSW, RCSW, Portland; letter to Governor Victor Atiyeh, Salem, July 5, 1983

BOLSTAD, Orin D., Ph.D., Clinical Psychologist, Director of Youth and Family Services, The Morrison Center for Youth and Family Service, Portland; letter to Governor Victor Atiyeh, Salem, July 12, 1983

BAUR, Karla M., MSW, Portland; letter to Governor Atiyeh, Salem, July 10, 1983

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SHILLING, Karen, RCSW, Family Therapist; BAKER, Sandra, RCSW; GIBSON, Roberta D., MSW; letter to Governor Victor Atiyeh, Salem, July 5, 1983

REESE, Susan Elizabeth, P.C., Attorney at Law, Portland; letter to Representative William D. Rutherford, Oregon House of Representatives, Salem, June 28, 1983

PAGANO, Don F., Ph.D., Clinical Psychology, Portland; letter to Hon. Bill Rutherford, Oregon State House of Representatives, June 26, 1983

HENLEY-HACKENBRUCK, Peggy, M.D., Portland; letter to Members of the Oregon House Judiciary Committee, June 24, 1983

PAGANO, Patricia J., M.A., M.Ed., Portland Agoraphobia Center; letter to Representative Bill Rutherford, Chair, House Judiciary Subcommittee, Salem, June 24, 1983

BROOKS, James A., M.D., Pediatric Associates, Portland; letter to State of Oregon House Judiciary Committee, Salem, June 27, 1983

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DALE, D. Duane, M.D., Child and Adult Psychiatry, Clinical Instructor of Psychiatry, Oregon Health Sciences University, Portland; letter to Delna Jones, State Representative, Salem, June 23, 1983

ENGLISH, Katharine, Attorney at Law, Portland; letter to Members of the House of Representatives, Salem, July 1, 1983

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FROM: VIRGINIA

EAST, Catherine, Virginia Women's Political Caucus; statement at Public Hearing on Child Support, July 22, 1985

FROM: WASHINGTON

ROTHENBERG, Michael B., M.D., Children's Orthopedic Hospital and Medical Center, Seattle; testimony before the Washington State House Judiciary Committee, March 11, 1983

BROWN, Laura S., Ph.D., Clinical Psychologist, Seattle; letter to Judith Klayman, Attorney at Law, Evergreen Legal Services, Seattle, January 22, 1983

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Custody and Visitation: Their Relationship to Establishing and Enforcing Support

by Nancy Polikoff

Child support issues cannot be entirely separated from related issues involving custody and visitation. This paper briefly examines three aspects of the impact of laws and practices concerning custody, visitation and support on each other. These three aspects are (1) joint custody or strong visitation enforcement as factors in producing support compliance, (2) use of custody threats to negotiate lower support awards, and (3) failure to pay child support as a factor in determining custody awards.

I. Joint Custody or Strong Visitation Enforcement as Factors in Producing Support Compliance

A. Joint Custody

Some advocates have stated that greater support compliance will occur if the parents have joint custody. From this premise, it has been suggested that imposition of joint custody, through laws that give joint custody preferential treatment or make it more difficult for judges not to award joint custody, will produce more adequate awards of support and greater compliance with those awards. In fact, two separate inquiries must be made. First, payment of support among parents who voluntarily agreed to joint custody must be evaluated. However, even if that group enjoyed greater support compliance, this would not speak to the efficacy of imposing joint custody over one parent's (or both parents') objections in order to achieve support compliance. That question would have to be separately investigated.

In fact, the only systematic study of custody arrangements and support payments does not support the position that joint custody awards, even when voluntarily chosen, result in greater compliance with support orders. A study by Jessica Pearson and Nancy Thoennes[1] found that joint residential custody is not a significant predictor of support compliance, and that joint legal/maternal residential custody is only one of several variables related to support performance. Even in the joint legal/maternal residential cases, in which the researchers found the custody factor to be one of several variables, full support was received only 60 percent of the time (as compared with 45 percent in sole maternal custody cases), and payments were reported to be frequently late. Thus, there is no basis from the data in this study for diverting attention away from the strong enforcement measures of wage withholding, tax refund intercept, liens and contempt. Additionally, as the researchers acknowledge, the subjects of the study had all voluntarily chosen joint custody arrangements; the lack of data on the experience of couples on whom joint custody is imposed makes it inappropriate to reach any conclusions concerning routine imposition of joint custody.[2]

The Pearson/Thoennes study also contains some alarming indications of the use of joint custody to justify inappropriately low support amounts. For example, in cases of joint residential

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[1] Pearson & Thoennes, Child Custody, Child Support Arrangements and Child Support Payment Patterns (1984) (available from the Research Unit of the Association of Family and Conciliation Courts, 1720 Emerson St., Denver, CO 80218).

[2] As a corollary matter, it has been suggested that use of mediation will produce greater support compliance. Data do not support this point. A thorough evaluation of mediation programs in four states concluded that "non-payment of support appears to be a phenomenon that has its roots outside of the original custody dispute and the dispute resolution method used to establish custody." Pearson & Thoennes, Parent Reactions to Their Child Custody Mediation and Adjudication Experiences, in Final Report of the Divorce Mediation Research Project 9 (Nov. 15, 1984) (available from the Association of Family and Conciliation Courts, 1720 Emerson St., Denver, CO 80218). The data showed that, for those with support arrangements in effect for less than a year, irregular or absent payment was a problem for one third of those who used mediation (regardless of the outcome of the mediation), for one third of those who worked out their own custody arrangements, and for one half of those who contested custody without mediating. In a different sample, gathered from those who had mediated three years earlier, support was received somewhat or very irregularly for one third of both those who successfully mediated custody arrangements and those in the adversarial sample, and for one half of those who tried mediation but did not reach agreements.

custody, support was awarded only 38 percent of the time, with another 9 percent receiving support for part of the year. The researchers note that, in cases where no support was ordered, the annual earnings of the two parents were equal at the time of separation. However, even under joint residential custody, the children were not living equally in two households; when there were no support orders, the average amount of visitation was 51 weekdays and 84 overnights per year. This means that the children were living with one parent more than two thirds of the time, yet that parent was receiving no support at all.

> ***. . . the only systematic study of custody arrangements and support payments does not support the position that joint custody awards, even when voluntarily chosen, result in greater compliance with support orders.***

On the question of amount of support, the Pearson/Thoennes data shows even more reason for concern. In cases of joint residential custody when there was a support order, the amount of visitation averaged only 23 weekdays and 58 overnights. Although this amount of contact with the other parent would not be an unusual amount of visitation in a sole custody/visitation agreement, the support payment for those with joint residential custody who were ordered to pay any support averaged 14 percent of net income, while the fathers whose wives had sole custody were ordered to pay an average of 26 percent of their net income. This finding confirms the fears of those who believe that joint custody is being used to inappropriately reduce support awards.

B. Visitation

Some advocates have suggested that support compliance can best be achieved through vigorous enforcement of visitation rights and that support is not paid precisely because visitation is obstructed or otherwise wrongfully denied. Data does not support this argument.

The initial premise—that mothers routinely interfere with or frustrate visitation by noncustodial fathers—is entirely unproven, and data suggests the contrary. From the mother's perspective, there are frequent reports of complaints about the father's failure to visit his children. Lenore Weitzman found this complaint among a significant portion of the mothers in her study of divorced families in California.[3] Geoffrey Grief found that 65 percent of the mothers he studied wished that the father was more involved with the children, as contrasted with 7 percent who thought the father was too involved.[4]

From the father's perspective, a recent study of randomly selected noncustodial fathers with cases active in the North Carolina IV-D system found that the fathers were substantially satisfied with their visitation. Only 8 percent of AFDC fathers and 13 percent of non-AFDC fathers reported visitation problems. The fathers were specifically asked about complaints concerning frequency or duration of visits, or interference by the mother, and none of these complaints were reported to any significant extent.[5]

Data from Travis County, Texas, where the County Domestic Relations Office enforces visitation orders as well as support orders, show that in 1983 there were 13,808 complaints of support delinquency and only 746 complaints concerning denial of visitation. Furthermore, mothers appear to respond much more cooperatively after visitation complaints are filed than fathers do after support delinquency complaints are filed.[6]

Even when there are problems with visitation, it is doubtful that such problems cause noncompliance with support orders. Weitzman, based on interviews with noncustodial fathers themselves, found that men with no visitation problems were just as likely to not pay support as they were likely to pay, and that men who did comply with support orders were just as likely as those who did not comply to say that they had some visitation problems. Other researchers have found a positive correlation between frequency of visitation and the fact of provision of child support, but they have noted that the data does not support the conclusion that more frequent visitation causes payment of support. Furthermore, they found no relationship between the amount of visitation and the level of support provided.[7]

When there has been unjustified interference with court-ordered visitation, appropriate remedies should exist, including the ability to reschedule visitation and the use of a neutral third party to facilitate visitation. Withholding child support is not an appropriate response.[8] Likewise, it is misguided to advocate strict enforcement of visitation rights as a means of obtaining adequate support awards and full compliance with those awards, as the evidence suggests that interference with visitation rights is not a substantial problem and that no cause and effect relationship exists between problems with visitation and payment of adequate support.

Advocates for widespread imposition of joint custody and vigorous enforcement of visitation rights usually support these positions as ends in and of themselves; these advocates are not principally concerned with ensuring full collection of equitable amounts of child support. Their assertion that greater compliance with child support orders will result from imposition of joint custody and enforcement of visitation rights is wholly unsubstantiated and may be seen as an attempt to gain legitimacy for their own goals by tying those goals to the goal of support compliance, which is less controversial and which is uniformly recognized.

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[3] L. Weitzman, The Divorce Revolution: The Unexpected Social and Economic Consequences for Women and Children in America (June 1985).

[4] G. Grief, Single Fathers (forthcoming 1985).

[5] Haskins, Dobelstein, Akin & Schwartz, Estimates of National Child Support Collections Potential and the Income Security of Female-Headed Families, Final Report (Jan. 1, 1985) (available from the Office of Child Support Enforcement, Washington, DC).

[6] Meurer & Musil, Public Enforcement of Visitation Rights: Moving Towards Equal Treatment (1984) (available from the State Bar of Texas, Family Law Section).

[7] Furstenberg, Nord, Peterson & Zill, *The Life Course of Children of Divorce: Marital Disruption and Parental Contact*, 48 Am. Sociological Rev. 656 (1983).

[8] *See generally* Note, *Making Parents Behave: The Conditioning of Child Support and Visitation Rights*, 84 Colum. L. Rev. 1059 (1984).

II. Use of Custody Threats to Negotiate Lower Support Awards

The trend toward increasing numbers of fathers asking for and receiving custody has had an impact on amounts of child support agreed upon in separation agreements. Essentially, fathers are able to use the threat of a custody dispute to negotiate for a lower amount of child support.

The Weitzman study found that one third of the divorced women reported that their husbands had used the threat of a custody dispute in financial negotiations. This phenomenon has also been described by Henry Foster and Doris Freed, who call it "custody blackmail,"[9] and by Richard Neely, Justice of the West Virginia Supreme Court, who has candidly described his own successful use of this tactic while he was an attorney in private practice.[10]

The only concrete attempt to address this problem has come from the case of *Garska v. McCoy*,[11] which enunciated as a standard for determining custody a presumption in favor of the parent who was the primary caretaker of the children prior to the divorce proceedings. The court explicitly stated:

> Since the parent who is not the primary caretaker is usually in the superior financial position, the subsequent welfare of the child depends to a substantial degree upon the level of support payments which are awarded in the course of a divorce. Our experience instructs us that uncertainty about the outcome of custody disputes leads to the irresistible temptation to trade the custody of the child in return for lower alimony and child support payments. Since trial court judges generally approve consensual agreements on child support, underlying economic data which bear upon the equity of settlements are seldom investigated at the time an order is entered....
>
> [W]e must insure that each spouse is adequately protected during the out-of-court bargaining. Uncertainty of outcome is very destructive of the position of the primary caretaker parent because he or she will be willing to sacrifice everything else in order to avoid the terrible prospect of losing the child in the unpredictable process of litigation.
>
> This phenomenon may be denominated the "Solomon syndrome," that is that the parent who is most attached to the child will be most willing to accept an inferior bargain. In the court of Solomon, the "harlot" who was willing to give up her child in order to save him from being cleaved in half so that he could be equally divided was rewarded for her sacrifice, but in the big world out there the sacrificing parent generally loses necessary support or alimony payments. This then must also be compensated for "in the best interests of the children." Moreover, it is likely that the primary caretaker will have less financial security than the nonprimary caretaker and, consequently, will be unable to sustain the expense of custody litigation, requiring as is so often the case these days, the payments for expert psychological witnesses.
>
> [E]stablishment of certainty in [regard to awarding custody to the primary caretaker parent] permits the issues of alimony and support to stand upon their own legs and to be litigated or settled upon the merits of relevant financial criteria, without introducing into the equation the terrifying prospect of loss to the primary caretaker of the children....
>
> [W]e are concerned to prevent the issue of custody from being used in an abusive way as a coercive weapon to affect the level of support payments and the outcome of other issues in the underlying divorce proceeding. Where a custody fight emanates from this reprehensible motive the children inevitably become pawns to be sacrificed in what ultimately becomes a very cynical game.[12]

Use of custody to defeat legitimate support actions has arisen in the context of IV-D proceedings involving both AFDC and non-AFDC cases. Specifically, a counterclaim for custody by the father often results in the mother being unrepresented on the custody issue, as many IV-D offices do not provide any representation in a custody dispute. If the mother is not receiving AFDC, she may exercise her option to forego the support action entirely rather than face a contested custody action. If she is receiving AFDC, however, she cannot withdraw, and she thus risks losing custody simply because the state is pursuing its support claim.

Custody counterclaims have often been used to successfully intimidate mothers out of pursuing modifications of support amounts or contempt actions to enforce support.

There has been some legislative response to this problem. In Alaska, for example, custody and visitation cannot be raised in a IV-D action to establish or enforce support.[13]

Custody counterclaims have often been used to successfully intimidate mothers out of pursuing modifications of support amounts or contempt actions to enforce support. The enforcement aspect will be somewhat alleviated by the mandatory wage withholding provisions that will be enacted in compliance with the Child Support Enforcement Amendments of 1984, as enforcement will be initiated automatically if the payor is more than one month in arrears, thereby denying the payor the opportunity to frustrate enforcement by a custody counterclaim.

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[9] Foster & Free, *Law and the Family: Politics of Divorce Process—Bargaining Leverage, Unfair Edge*, 192 N.Y.L.J. 6 (July 11, 1984).

[10] Neely, The Divorce Decision 63-64 (1984).

[11] Garska v. McCoy, 278 S.E.2d 357 (W. Va. 1981).

[12] *Id.* at 360, 361, 362 (footnotes omitted).

[13] Alaska Stat. § 47.23.080(c) (1984). [Editor's Note: *see* this month's Child Support column, *An AFDC Mother's Right to Counsel: Cusody Issues in Proceedings Instigated by the IV-D Agency* at p. 278.]

It is hoped that greater awareness by judges and legislators of the use of threats to challenge custody in order to lower the amounts of support awards will result in legislative and judicial approaches designed to promote adequate support amounts and neutralize the impact of inappropriate custody claims. Greater awareness could be heightened by inclusion of this problem in reports made by state Child Support Commissions. Research concerning the level of support awards in West Virginia, with its primary caretaker presumption in custody determinations, would also help determine if this approach in fact reduces inappropriate bargaining and results in more adequate and equitable amounts of child support.

III. Failure to Pay Child Support as a Factor in Determining Custody Awards

Just as custody law and practice has an impact on support amounts, the failure of fathers to pay child support is having an impact on custody determinations. Whenever a judge uses a father's superior economic position as a basis for awarding him custody without also addressing the extent to which the father's economic advantage is determined or exacerbated by his failure to pay child support, then that judge is not taking a thorough look at the best interests of the child. Often, it is the father's failure to pay child support that creates economic hardship for the mother and children, yet the custody decision may fail to assess the responsibility appropriately. For example, a Maryland trial judge recently awarded custody of two teenage children to their father, even though the children had lived with their mother, who was receiving AFDC, most of their lives.[14] The judge made frequent disparaging remarks about the mother's receipt of AFDC and about the values that children of an AFDC mother would learn, and he praised the father for his solid employment history. Although the father had never paid any child support, either to the mother or to the state, the judge apparently did not believe that this was any negative reflection on the father. In a District of Columbia case, the appellate court upheld the trial judge's partial reliance on the father's superior financial position in awarding the father custody and explicitly blamed the mother for her failure to seek court-ordered support.[15] This implicitly approved the tactic of a father who does not provide any support and who then seeks custody based on his superior economic status.

Philosophically, the use of economic criteria in determining custody returns us to the nineteenth century notion that children, along with all property, belong to their fathers upon divorce. The "best interests of the child" standard for determining custody reflected the paramount importance of nurturing and other emotional factors, rather than economic factors, and should not be eroded.

The Wisconsin Supreme Court has squarely addressed this problem by disapproving of the use of financial criteria in determining custody. In *Gould v. Gould*, the court reversed an award of custody to the father, stating:

> While the economic well-being of children of divorced parents must be provided for, it is best achieved by the Court's making appropriate child support and maintenance awards and by focusing judicial resources on enforcement of awards and not by considering financial ability as a criterion for custody.[16]

Several states today explicitly permit financial considerations to affect the custody award.[17] The most far-reaching proposal on this subject may be found in a bill introduced this session into the Oregon House of Representatives that, if enacted, would require that, when all other factors are in reasonable balance, custody would be awarded to "the parent who will require the least financial assistance from the other parent, or from any public funds."[18]

Attorneys in private practice need to be prepared to argue that adequate child support awards and effective enforcement of those awards are the proper means of assuring that the children's economic needs are met, and that the "best interests of the child" should be determined without regard to the financial status of the parties.

This issue is another one that is sure to be brought to the attention of the courts, legislators and the public through state Child Support Commissions.

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[14] Campbell v. Campbell, No. 737, slip op. (Md. Ct. Spec. App. Feb. 1, 1985) (Clearinghouse No. 39,403).

[15] Albergottie v. James, 470 A.2d 266 (D.C. 1983).

[16] Gould v. Gould, 342 N.W.2d 426, 431 (1984).

[17] *See, e.g.*, MICH. COMP. LAWS ANN. § 722-23(c) (Supp. 1983-84).

[18] H. Bill 2636, 63rd Oregon Leg. Assembly, 1985 Regular Sess.

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Why Are Mothers Losing: A Brief Analysis of Criteria Used in Child Custody Determinations

*NANCY D. POLIKOFF**

The development of standards for awarding child custody upon divorce has been greatly influenced by changing concepts of family rights and responsibilities, appropriate sex roles and childrearing theories. Preference for the mother in awarding custody, often accepted by the public as both the current and the historical practice, is actually an extremely limited doctrine of historically short duration. Maternal preference has customarily been embodied in the presumption that a child of tender years should remain with his/her mother.[1] While tender years has rarely been defined, the age of seven is frequently cited, perhaps as a derivation from the first English statute on the subject.[2] However, the tender years presumption has not been the equivalent of a maternal preference custody standard for children of all ages, as reflected in state statutes, such as Oklahoma's, which expressly provide for paternal preference where older children are involved:

> As between parents adversely claiming the custody, . . . other things being equal, if the child be of tender years, it should be given to the mother, if it be of an age to require education and preparation for labor or business, then to the father.[3]

Even the tender years presumption did not become an established part of American family law until this century. At common law, fathers retained their children as of right upon separation or divorce.[4] The unwavering judicial application of this right is reflected in *Ex Parte Skinner*,[5] an English case in which a mother was denied custody of her young child although the father was in prison and the father's mistress provided child care, bringing the child to the prison for visits. Although occasional American decisions in the first half of the nineteenth century granted awards to mothers, the majority principle was represented by *Commonwealth v. Briggs*, in which a "clear and strong case of unfitness" was required to deprive a father of custody.[6] Later in the century, as the industrial revolution and the adoption of compulsory public education produced a decline in the economic value of children, awards to mothers became more common. By 1900, however, only fourteen states had statutorily altered the common law rule of paternal preference.[7] Especially notable during this period is the fact that the father was relieved of the duty to

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[1] There have been two very different interpretations of the tender years presumption. It may either tip the scales to favor the mother if all other things are equal, *e.g.*, McCreery v. McCreery, 218 Va. 352, 237 S.E.2d 167 (1977), or it may require that custody be awarded to the mother unless she is proven unfit, *e.g.*, Bruce v. Bruce, 14 Okla. 160, 168, 285 P. 30, 37 (1930) ("Courts will not deprive a mother of the custody of her children where the record clearly shows that she is a fit person to have the custody and care of them.").

[2] Justice Talfourd's Act, 1839, 2 & 3 Vict., ch. 54.

[3] OKLA. STAT. tit. 30, §11 (1971 & Supp. 1978).

[4] A review of the early history of child custody determinations may be found in Roth, *The Tender Years Presumption in Child Custody Disputes*, 15 J. FAM. L. 423, 425-32 (1977) [hereinafter cited as Roth], and in Foster & Freed, *Life With Father: 1978*, 11 FAM. L.Q. 321, 325-29 (1978).

[5] 27 Rev. Rep. 710, 9 Moore 278 (1824).

[6] 33 Mass. (16 Pick.) 203, 205 (1834).

[7] Roth, *supra* note 4, at 429.

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support children in their mother's custody.[8] In fact, the requirement for child support payments by fathers did not become the widespread practice until the 1920's.[9] Thus, at a time when employment opportunities for most women were significantly limited, the early years of maternal preference benefitted only those women who were financially independent or who had family resources to fall back upon.

The doctrine that custody determinations should be made according to the "best interests of the child" developed while the tender years presumption was still in place. It was frequently asserted that presuming the award of young children to their mother's custody was simply a shorthand for what was in the child's best interests.[10] Currently, two-thirds of the states have, by statute or judicial determination, entirely rejected the tender years presumption.[11] In the minority of jurisdictions that refer to it at all, the rule is subordinated to the "best interests of the child" standard, and interpreted in a way that does not prevent fathers from obtaining custody. For example, in *Neis v. Neis*,[12] the Kansas appellate court had no trouble affirming an award of one-year-old twins to their working father, rather than to their mother who could stay at home with them, in spite of the tender years presumption.

The political movement for "fathers' rights" must be viewed against both this historical and contemporary background. The demands of the movement are based upon the premise that men are unfairly disadvantaged in custody litigation. Analysis of court decisions in recent years, however, suggests that the contrary is true—mothers are losing custody as a result of the use of inappropriate criteria, insufficiently related to the best interests of the children, and of sex discriminatory judicial reasoning. The complaints of the "fathers' rights" movement, with respect to economic consequences[13] as well as custody,[14] are therefore illegitimate, and serve to obscure the true position of women in divorce court.

The frequently cited statistic that 90% of all children of divorce are in the custody of their mothers[15] is not evidence of unfairness within the legal system toward men. In the vast majority of cases, the fathers do not want custody and the children remain with the mother by parental choice. When fathers do want custody, their chances of winning are substantial. While little hard-core data exist, the statistics that have been gathered do not support the claims of the "fathers' rights" movement. Lenore J. Weitzman and Ruth B. Dixon found in a study limited to Los Angeles County that in 1977, 63% of all fathers who requested custody in court papers were successful.[16] A study of 196 Minneapolis cases showed fathers winning 45% of the time.[17] One New York family court judge awarded custody to men as often as to women during a five-year period in the 1970's.[18] Two researchers who surveyed North Carolina judges in 1979 found that fathers prevailed in almost one-half of the cases.[19] The Legal Aid Society of Alameda County, California, reports that of thirteen contested custody trials in 1979, fathers prevailed 38% of the time.[20] Furthermore, reports from attorneys and analysis of written court opinions[21] reveal that the fathers who are winning have not been exceptionally involved in childrearing prior to divorce.

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[8] *See* Brown, *Mothers, Fathers and Children: From Private to Public Patriarchy*, in Women and Revolution 253-56 (L. Sargent ed. 1981).

[9] One commentator has put the date as late as the 1940's. *See* Orthner & Lewis, *Evidence of Single Father Competence in Child Rearing*, 13 Fam. L.Q. 27, 28 (1979) [hereinafter cited as Orthner & Lewis].

[10] *See, e.g.*, Unif. Marriage & Divorce Act § 402, 9A U.L.A. 197 201 (1970), in which the National Conference of Commissioners on Uniform State Laws recommended a "best interests" test, but noted that preference for the mother of young children, when all things were equal, was a shorthand means of expressing what was in the child's best interests.

[11] Foster & Freed, *Divorce in the Fifty States: An Overview*, 14 Fam. L.Q 229 (1981).

[12] 599 P.2d 305 (Kan. App. 1979).

[13] For example, a letter from Equal Rights For Fathers (ERFF) of New York State, Inc. to New York State Senator H. Douglas Barclay (March 5, 1980) opposed legislation concerning equitable distribution of property upon divorce. Specifically, ERFF objected, among other things, to inclusion of pension plans in marital property, permitting a judge to order insurance coverage by one spouse for the other's benefit, and permitting spousal support to continue if an ex-spouse lives with a "marriageable male." The letter also questioned the constitutionality of requiring parental support until the age of 21 when the age of majority is 18.

[14] *See generally* G. Silver & M. Silver, Weekend Fathers (1981).

[15] *Id.* at 54.

[16] Weitzman & Dixon, *Child Custody Awards: Legal Standards and Empirical Patterns for Child Custody, Support and Visitation After Divorce*, 12 U.C.D. L.Rev. 471, 502-04 (1979).

[17] M. Wheeler, Divided Children: A Legal Guide for Divorcing Parents 40 (1980).

[18] *Id.* Although Wheeler suggests that the high success rate for fathers may be the result of self-selection, where only men with strong cases contest custody, case analysis reveals nothing unusual (and certainly nothing compelling) about those fathers who pursue custody.

[19] Orthner & Lewis, *supra* note 9, at 28.

It is the position of the author that, absent extraordinary circumstances, custody should be awarded to the "primary caretaker" parent. A primary caretaker presumption has been enunciated by the West Virginia Supreme Court in *Garska v. McCoy*.[22] It is a sex-neutral standard, placing paramount value on preserving the child's relationship with the parent who has provided primary nurturance and care during the ongoing marriage. While there is no doubt that, at this point, such a standard would most likely result in maternal custody, it would do so not because of sex-stereotyped notions about a mother's love,[23] but because the child's needs for nurturance and continuity are still legitimate needs, and because the primary caretaker during marriage is still usually the mother. A father filling that role would, of course, also be entitled to the presumption.

When courts do not heavily weigh primary parenting, they do rely on other factors which, without a substantial enough connection between the factors weighed and the best interests of the child, increasingly result in women losing custody of their children. Of many such factors, three are particularly significant: availability of economic resources, disparate treatment of employed mothers and employed fathers, and the father's remarriage.

A. Economic Resources

A Michigan statute, enumerating factors for the judge to consider in awarding custody, includes the following:

> The capacity and disposition of the parties involved to provide the child with food, clothing, medical care, . . . and other material needs.[26]

In *Dempsey v. Dempsey*,[27] the trial court awarded custody of three children to their father because, with the salary he earned from his full-time job, he was most financially able to maintain the home in which the children lived. The facts revealed not only that the mother had been the children's primary caretaker, but that the youngest child needed home therapy for epilepsy which only the mother knew how to give. In fact, the mother's impetus for the divorce was the father's lack of interest in family life. The father, who was a good earner and hard worker, frequently missed dinner with the family, worked long hours, and spent his leisure time bowling and on snowmobile trips without the family. The trial court judge, in reserving a ruling on the mother's obligation to pay child support, suggested that she might fulfill this obligation by serving as the children's regular babysitter!

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[20] Data gathered by Adele Hendrickson, Attorney In Charge, Family Law Unit, Oakland, Ca.

[21] Extensive case analysis can be found in Polikoff, *Child Custody Disputes: Exploding the Myth That Mothers Always Win*, in FAMILIES, POLITICS AND PUBLIC POLICY: A FEMINIST DIALOGUE ON WOMEN AND THE STATE (I. Diamond ed.) (to be published in 1982).

[22] 278 S.E.2d 357, 363 (W.Va. 1981). However, the court in *Garska* did emphasize that the "primary caretaker" standard applies only to children of tender years. Thus, a mature child will have input into the custody decision, and a court may award the child to the parent who is not the primary caretaker.

[23] These sex-stereotyped notions have found their way into court opinions. *See, e.g.*, Bruce v. Bruce, 14 Okla. 160, 168, 285 P. 30, 37 (1930), in which the court stated:

> Courts know that mother love is a dominant trait in the heart of the mother, even in the weakest of women. It is of divine origin and in nearly all cases far exceeds and surpasses the parental affection of the father. Every just man recognizes the fact that minor children need the constant bestowal of the mother's care and love.

[24] *See, e.g.*, Dempsey v. Dempsey, 96 Mich. App. 276, 292 N.W.2d 549 (1980), *aff'd in part and rev'd in part*, 409 Mich. 495, 296 N.W.2d 813 (1980) (discussed *infra* at notes 27-28 and accompanying text).

[25] 48 Or. App. 965, 618 P.2d 465 (1980).

[26] MICH. COMP. LAWS ANN. § 722.23(c) (Supp. 1981-82).

[27] 96 Mich. App. 276, 292 N.W.2d 549 (1980), *aff'd in part and rev'd in part*, 409 Mich. 495, 296 N.W.2d 813 (1980).

The Michigan Court of Appeals had the insight to realize that by placing such a priority on the economic circumstances of the parties, the trial judge's evaluation would almost preclude mothers from obtaining custody of their children. The appellate court noted the obvious—that the mother's low earnings from part-time employment were due to three pregnancies and the care of three children, one of whom was epileptic. Although the court of appeals wanted to reverse the court below and award custody to the mother, the state supreme court, even though it agreed with the lower appellate court's reasoning, merely remanded the case to the trial judge for a new determination.[28]

In *Porter v. Porter*,[29] a North Dakota appellate court upheld a custody award to the father of the three children of a six-year marriage. Pending trial, the children had been in the temporary custody of their mother, who worked four to five hours a night as a waitress/hostess, leaving the children with a babysitter. The mother testified that she did not work a day shift because if she did, no one would be home when the children returned from school. She also said she had found a part-time job cleaning apartments in the afternoon on a trial basis, and that she would quit her evening job and return to it only if necessary. The trial court judge wanted the mother to finish her B.A. degree in order to improve her earning capacity, but she testified that she wanted to wait to do this until her youngest child was older. The court awarded custody to the father, an Air Force captain, because he would be better able to support the children, and would be able to spend evenings with them. On appeal, the mother argued that it was unfair for her to lose her children because she chose to stay home with them, foregoing career opportunities. But the court, in a cruel twist of the customary logic, stated that it would not be more fair to deprive the father of custody because he did not say home during the day, as "both care and support are important".[30]

The *Porter* case illustrates how far courts have shifted from valuing the mother's nurturance during early years to elevating the ability to support as a determining criterion. Attaching such importance to economic capacity is not only an obvious burden upon most mothers seeking custody, but is also a departure from the customary concept that, first, custody is decided according to the best interests of the child and, then, to equalize the financial burden, child support payments are ordered. The overall failure of child support enforcement has resulted in custodial mothers carrying virtually the sole economic responsibility for their children.[31] A judge who has good reason to expect that a support order will be violated, and that reliable enforcement is unrealistic, may be tempted to assure the material well-being of the children by simply awarding them, in the first instance, to their economically dominant parent. In fact, the use of economic criteria encourages a father not to pay support, expecially prior to a final custody hearing, so as to exacerbate the financial disparity of the parents.

It is also possible that some judges have become convinced by "fathers' rights" movement literature that the child support system is unfair to men,[32] totally disregarding national data on how few support awards are made, how low they are, and how rarely they are paid.[33] Such judges, especially if the incomes of the parents are grossly disproportionate, might be unwilling to impose a substantial child support award on the father.

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[28] 409 Mich. 495, 296 N.W.2d 813 (1980).

[29] 274 N.W.2d 235 (N.D. 1979).

[30] *Id.* at 242.

[31] *See generally* J. CASSETTY, CHILD SUPPORT AND PUBLIC POLICY: SECURING SUPPORT FROM ABSENT FATHERS (1978).

[32] For example, WEEKEND FATHERS, *supra* note 14, at 21-23 and 58-59, takes the position that divorced fathers pay substantial sums for children with whom they are denied contact. The authors also claim, with no supportive data, that "the law vigorously pursues the delinquent father who has abandoned his family financially." *Families: Fighting for Fathers' Rights*, Washington Post, Jan. 13, 1982, at B5, col. 3.

[33] Child support is awarded upon divorce to 71% of white women, 44% of Hispanic women, and 29% of black women. *Women in Poverty*, 15 CLEARINGHOUSE REV. 925, 928 (1982). Awards made constitute less than half the cost of raising the child. Seal, *A Decade of No-Fault Divorce: What It Has Meant Financially for Women in California*, 1 FAM. L. ADVOC. 10,11 (1979). Of all the studies of child support compliance within a given state or county, the highest percentage of full compliance found has been 38%. A recently published California study showed that one-third of the women received the full amount of court ordered support during the first year, while 43% received little or no support. Weitzman, *The Economics of Divorce: Social and Eco-*

There is no necessary correlation between economic dominance and the best interests of the children. In fact, the economically dominant parent is likely to have achieved that status either through explicit devotion to work over family, or through the operation of sex discrimination and sex segregation in the workforce.[34] While providing for the economic well-being of children of divorce is a laudable goal, it is one best achieved by making appropriately proportionate child support awards, and by focusing resources on child support enforcement, not by including financial ability in custody criteria.

B. Parental Employment

The flip side of penalizing mothers with limited financial resources due to sporadic or part-time employment is penalizing mothers who work full-time for not being sufficiently available to their children. Since men are traditionally expected to be full-time workers, fathers do not face this disadvantage. In fact, a man with a full-time job who provides any assistance in childrearing, however limited, looks like a dedicated father, while a woman with a full-time job who still does primary, but not all, caretaking, looks like "half" a mother, dissatisfied with the childrearing role.

This sex-discriminatory analysis resulted in the award of custody of a six-year-old girl to her father in *Gulyas v. Gulyas*.[35] The mother was the city manager of H & R Block in Buffalo, New York, and she worked 40 to 50 hours per week during tax season, and 10 to 30 hours per week at other times. She could leave her work during the day if necessary. She was at home when her child left for school, and she picked her up at a neighbor's home 1½ hours after school ended. The father was a pipe coverer who worked the day shift at Ford Motor Company. He had an unvarying 40-hour week, could not leave mid-day, and was present when his daughter returned from school, although he had already gone to work when she left for school.

In *Gulyas*, only the impact of the mother's career was considered. The trial court's findings stated that "the wife's career and need for obtaining a better livelihood heretofore has diminished her manifested ability to care for the child other than in Day Care . . . ."[36] However, a review of the record for a law review article revealed that the child had spent only two months in a day care program between kindergarten and first grade, and that while she was in school, she spent no more than eight hours a week at a neighbor's home until her mother came home from work.[37] The trial judge found the mother to be an "energetic and ambitious career woman,"[38] although she offered to give up her career to care for the child, and testified that she could refuse a work transfer. Furthermore, there was no evidence that the father spent more time with his daughter than the mother did. The record offered no factual support for an implicit finding that the mother's career, and not the father's, interfered with the giving of love, affection, and guidance to the child.

It should be noted that the child in *Gulyas* had resided with her mother for over one-and-a-half years during the marital separation, but the father had snatched her in New York four months before the hearing. As a result, the judge gave the father an edge on the factor of continuity. Furthermore, although the mother was remarried and the father was not, the father lived with his parents and his mother cared for the child.

Although the appellate court affirmed the award to the father, one judge dissented. He noted that the mother's offer to quit her job would disadvantage her in her ability to provide for the material needs of her daughter, thus placing her in a "Catch-22" situation, and that "the best interests of the child . . . should not be used as a

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nomic Consequences of Property, Alimony and Child Support Awards, 28 U.C.L.A. L. Rev. 1181, 1254 (1981).

[34] Recent government data reveals that there is no job category in which women earn more than or as much as men. The total ratio of female to male earnings is 64.7%. Women sales workers earn 52% of what male sales workers earn. Even in the nursing profession, which is 90.9% female, women earn only 94.7% of what men earn. *1981 Weekly Earnings of Men and Women Compared in 100 Occupations*, U.S. Dep't of Labor, Bureau of Labor Statistics (Mar. 7, 1982).

[35] 75 Mich. App. 138, 254 N.W.2d 818 (1977).

[36] *Id.* at 141, 254 N.W.2d at 818.

[37] Note, *Family Law—Child Custody—Mother's Career May Determine Custody Award to Father*, 24 Wayne L. Rev. 1159, 1165 (1978) [hereinafter cited as Note, *Family Law*].

[38] 75 Mich. App. at 142, 254 N.W.2d at 819.

screen with which to hide outmoded notions of a woman's rule [sic] being near hearth and home."[39] The dissenting judge found the trial judge to be "especially preoccupied with [the mother's] job status."[40] The dissent also referred to "undue emphasis on [the mother's] career."[41] Research into the lower court record showed that in a five page opinion, the trial judge mentioned the mother's working eleven times. He began the opinion by saying that the case had a background of complaints by the husband regarding his wife's work. In a revealing comment, this judge stated that the marriage was "normal until the wife felt compelled to go to work to help support the family."[42]

In analyzing the *Gulyas* decision in 1978, one commentator recognized the dangers which too often go unnoticed today: "[C]ourts may lose sight of the best interests of the child in an effort to accord fathers equal treatment in custody determinations."[43] The commentator continued to note that "[t]heoretically, the parties now come before the court on an initially equal footing to better assure determination of the child's best interests. When judicial biases are allowed to control, however, we run the risk of merely shifting a presumption for one parent to the other. . . ."[44]

Application of such a double standard to employed mothers and fathers was specifically argued by a mother who lost custody of her five-year-old son and two-year-old daughter in *Simmons v. Simmons*.[45] At the time of the trial in July 1976, the children were in the custody of their mother, who had been awarded custody, apparently by consent, at the time of the divorce in April 1975. Shortly thereafter, the mother began purchasing cosmetic studios. During approximately one month of job training, her ex-husband kept one child and her mother cared for the other. Otherwise, both children were apparently in the care of their mother, without interruption, from birth. The father was a millionaire oil company president who filed for a change of custody one year after the divorce. He married the woman he had been living with during the same month. While the mother worked, the children were cared for by a live-in housekeeper. During a 10-month period, five housekeepers had been employed; the frequent turnover was at least partially the result of the disruption and pressure of the custody proceedings.

In ordering the change of custody, the trial court noted that the mother's work gave her little time with her children, and that she did not want the children to interfere with her business. Concerning the father, the court noted that he had remarried, that his wife would be home to care for the children, and that he had "arranged his business affairs so he can spend a normal working father's time with the children."[46] Emphasizing the father's remarriage, the trial judge found that "parental authority in the home of the defendant [father] would be more defined than it is in the home of the [mother]. The present wife of the [father] is ready, willing, and able to care for the minor children."[47]

The appellate court, in upholding the custody change, presented the following non-sequitur:

> The trial court found [the wife's] business and social interests, after her divorce, had priority over her concern for her children as well as her willingness to devote attention to [them]. [The husband], on the other hand, had remarried and he and his wife were willing and able to offer the children a more stable home environment.[48]

What about the husband's business and social interests? His commitments as president of an oil company were not adequately discussed by the court's reference to the life of a "normal working father." The language and tone of the court's opinion support the inference that the mother in this case was, in fact, the victim of a double standard—and that there is no "normal working mother" concept, because it is still not considered "normal" for a mother to be working. The over-emphasis on the father's remarriage was further heightened by the appellate court's reasoning that the only choice was either to place the children "in the custody of a series of housekeepers or in the custody of the children's stepmother."[49] No employed mother could ever prevail under such a test. The court's usual preference for continuity of placement was not even mentioned in the decision removing the children from their mother.

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[39] *Id.* at 151, 254 N.W.2d at 823 (Riley, J., dissenting).

[40] *Id.* at 149, 254 N.W.2d at 822 (Riley, J., dissenting).

[41] *Id.* at 151, 254 N.W.2d at 823 (Riley, J., dissenting). In spite of the dissenting judge's insight, the actual reason for his dissent was the trial judge's failure to place on the record the preference of the child, and he did not rule that the attitude toward the mother's career was an abuse of discretion.

[42] Note, *Family Law*, *supra* note 37, at 1168 n.54 (quoting Brief for Appellant at 2, Gulyas v. Gulyas, 75 Mich. App. 138, 254 N.W.2d 818 (1977)).

[43] *Id.* at 1161.

[44] *Id.* at 1171.

[45] 223 Kan. 639, 576 P.2d 589 (1978).

[46] *Id.* at 641, 576 P.2d at 591.

[47] *Id.*

[48] *Id.* at 643, 576 P.2d at 592.

These cases reflect the erroneous assumption articulated by a Missouri appellate court that "if the mother goes and returns as a wage earner like the father, she has no more part in the [childrearing] responsibility than he. . . ."[50] In fact, an employed mother does not, for that reason alone, cease to be the primary parent. If courts do not rigorously analyze the actual provision of nurturance and care during the marriage, they will make custody determinations from traditional and stereotypic observations that the father is doing his job but the mother is not doing hers.

C. Remarriage

It is important to note in the cases discussed above that the mother's remarriage in *Gulyas* was of no consequence, but that the father's remarriage in *Simmons* was enormously significant. When a father remarries, judges may presume that, even if his wife is employed, an additional childcare provider will be in the home. When a mother remarries, however, no such assumption is made about the role her new husband will play in relation to the children. Thus, a woman's remarriage may have little impact on the judicial balancing process. Coupled with the fact that divorced men remarry twice as often as divorced women,[51] the consideration of remarriage can actually have a devastating effect on women in custody proceedings.

For example, in *In re Marriage of Handy*[52] an Oregon trial court judge awarded custody of a six-year-old girl and a three-year-old boy to their father, based on his plan to remarry and the judge's high opinion of the father's future wife. Because Oregon case law specifically mandated consideration of who has provided primary care for the children,[53] and because the mother had performed that role, the appellate court reversed.

The outcome in *Handy* reveals that any analysis which heavily weighs the availability of a stepmother without valuing the pre-existing bond between the children and their primary caretaker mother comes dangerously close to implying that mothers are fungible—that one woman will do just as well as another in rearing any particular children. Such use of remarriage as a criterion in determining custody, either initially or in modification proceedings, contradicts the idea put forth by some feminists[54] that awarding custody to fathers contributes to the downfall of the traditional parenting roles of men and women. Only if the father truly performs the primary nurturing function can the traditional roles be shaken; if the stepmother provides that nurturing and daily care, then sex roles remain intact.

Garska v. McCoy and the Primary Caretaker Presumption

Garska v. McCoy[55] is a landmark decision which realistically examined the larger picture of custody disputes and also developed a standard which preserves sex neutrality, encourages paternal involvement in childrearing, and guarantees that the child's bond with the parent providing daily care and nurturance will be maintained. Simply put, the court established a presumption that the primary caretaker parent, if fit, would be awarded custody of children of tender years.[56]

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[49] *Id.* at 644, 576 P.2d at 593.

[50] *In re* Marriage of Shepherd, 588 S.W.2d 174, 176 (Mo. Ct. App. 1979) (quoting Stanfield v. Stanfield, 435 S.W.2d 690, 692 (Mo. Ct. App. 1968)).

[51] In the 25-44 age range, the remarriage rate of divorced men is almost double that of divorced women. National Center for Health Statistics, U.S. Dep't of Health & Human Services, Pub. No. (PHS 80-1120), Vital Statistics Reports, Final Marriage Statistics, 1978, 6 (Sept. 12, 1980).

[52] 44 Or. App. 225, 605 P.2d 738 (1980).

[53] *In re* Marriage of Van Dyke, 48 Or. App. 965, 618 P.2d 465 (1980).

[54] For example, Karen DeCrow, past president of the National Organization for Women, supported New York State's mandatory joint custody legislation, stating that joint custody provided a step towards bringing fathers into the parenting arrangement. She also ties her support of joint custody to her belief that women have been hurt in work, education and the law by the perceived link between mother and child. Memorandum from Equal Rights For Fathers (ERFF) of New York State, Inc. to New York State Senators (Apr. 2, 1981) (quoting extensively from Ms. DeCrow).

[55] 278 S.E.2d 357 (W.Va. 1981).

[56] *Id.* at 362-63. *Ed. note*: In July of 1982 a Pennsylvania court adopted the primary caretaker standard for custody disputes involving children of tender years. In Jordan v.

The following factors were enumerated as comprising, at least in part, primary parenting:

> (1) preparing and planning of meals; (2) bathing, grooming and dressing; (3) purchasing, cleaning, and care of clothes; (4) medical care, including nursing and trips to physicians; (5) arranging for social interaction among peers after school, i.e., transporting to friends' houses or, for example, to girl or boy scout meetings; (6) arranging alternative care, i.e., babysitting, day-care, etc.; (7) putting child to bed at night, attending to child in the middle of the night, waking child in the morning; (8) disciplining, i.e., teaching general manners and toilet training; (9) educating, i.e., religious, cultural, social, etc.; and (10) teaching elementary skills, i.e., reading, writing and arithmetic.[57]

Garska v. McCoy provides a sex-neutral standard which should have the effect of encouraging fathers to co-parent during the ongoing marriage. If the father has been the primary caretaker, he gets the benefit of the presumption. If there has been equal caretaking, there is no presumption.[62] Parents who have been accustomed to truly shared childrearing are those most likely to continue such an arrangement through joint custody on divorce. Presumptions favoring joint custody upon divorce,[63] regardless of who has provided care and nurturance during the marriage, actually discourage co-parenting during marriage by sending a clear message to fathers that they have a right to intimate involvement with their children upon divorce—if they choose to exercise it—no matter how detached they are from the ongoing care of their children during the marriage. "If they choose to exercise it" is a very large "if," as most joint custody awards provide for, or result in, joint *legal* custody without joint *physical* custody, giving rights but not responsibilities to the parent not providing ongoing primary care.[64] Under mandatory joint custody provisions, mothers usually continue to do primary or almost sole parenting, with less control over their children and their own lives, and less child support.[65] Although joint childrearing by mothers and fathers should be encouraged, joint custody presumptions are not carefully tailored to do this. The *Garska v. McCoy* principle, if adopted nationally, would go substantially farther in breaking down traditional sex roles because it focuses the inquiry specifically on caring for and nurturing the children.

Legitimate application of sex neutrality should customarily produce an award of custody to the father only when he has fulfilled the primary nurturing role in the family. Men who are angered by the thought of losing custody of their children under such a standard should begin not by changing divorce courts, where the trends are squarely in their favor, but where childcare begins—in the home.

Jordan, 8 Fam. L. Rep. (BNA) 2596 (Pa. Super. Ct. Pittsburgh Dist. August 17, 1982) the court held that positive consideration must be given to the parent who has been the primary caretaker. The decision rejects the trial court's finding that a father who had lived apart from his five year old son for four years would provide a more stable home than the custodial mother who had moved three times in four years. The court also disputed the trial court's conclusion that Pennsylvania law favors two parent families in custody disputes.

[57] *Id.* at 363.

[58] *Id.* at 361.

[59] *Id.* at 360, 362.

[60] *Id.*

[61] *Id.* at 362.

[62] *Id.* at 363.

[63] Mich. Comp. Laws Ann. § 722.26(a)(6)(A)(2) (West Supp. 1981-82) and Cal. Civ. Code § 4600.5(a) (West Supp. 1981) contain such a presumption if both parents agree. For an analysis of the manner in which other provisions of joint custody legislation interact to create an implied joint custody presumption in all cases, see Schulman & Pitt, Second Thoughts on Joint Child Custody: Analysis of Legislation and Its Implications for Women and Children 20-23 (August 1981) (unpublished manuscript, available from National Center on Women & Family Law, 799 Broadway, Room 402, New York, N.Y. 10003) [hereinafter cited as Schulman & Pitt]. Legislation recently introduced in the District of Columbia would, if enacted, institute a presumption of joint custody and a preference for joint custody, even when both parents did not agree to it. D.C. Joint Custody Act of 1982, Bill No. 4-424, § 3(b)(1)(A) and § 3(c)(1) (March 3, 1982) (introduced by Councilmember John Ray).

[64] One Los Angeles trial court judge suggested that 95% of all joint custody awards involved joint *legal* but not joint *physical* custody. Dullea, *Weighing the Importance of a Joint Custody Law*, N.Y. Times, Apr. 27, 1981, at C19, col. 2. For a general discussion of this phenomenon, see Schulman & Pitt, *supra* note 63, at 3-10.

[65] *See* Hendrickson & Schulman, *Child Custody: Don't Count on Winning*, Aegis, Spring 1982, at 56.

[66] 278 S.E.2d at 363.

Chairman Miller. Thank you very much. Mr. Levy, your full statement will be placed in the record. Any extent to which you can summarize will be appreciated.

STATEMENT OF DAVID L. LEVY, ESQ., PRESIDENT, NATIONAL COUNCIL FOR CHILDREN'S RIGHTS, WASHINGTON, DC

Mr. Levy. I am David L. Levy, an attorney, president of the National Council for Children's Rights. Thank you, Chairman Miller and members of the committee for inviting us to testify.

We prepare reports, audio cassettes and other materials which we distribute to lawmakers, judges and the public. We seek to reduce the trauma of divorce for children. We favor joint custody, mediation, fair child support, and access enforcement also known as visitation enforcement.

By the time the child is 18, he or she has a one in four chances of suffering from divorce. There are more than 100,000 custody battles in this country every year, resulting in unnecessary lawsuits, long plays in outcome, exhorbitant costs and alienation of children from one or both parents. Clearly, children need strong parenting both before and after separation and divorce. What is strong, healthy parenting?

This committee has heard from Dr. Nick Stinnett, who echoed the traits of strong families of Dr. Dolores Curran which include communicating, affirming and supporting, respecting others, trusting, sharing time, value and service, and getting help when help is needed. Look at these traits and consider the form of resolution that we use in custody: the adversarial process, *Smith* v. *Smith, Jones* v. *Jones.* Being adversarial is certainly not communicating, is not respectful of one another, is not trusting of one another and does not respect privacy and so on.

What encourages healthy families past divorce? Co-parenting by joint custody, mediation, visitation enforcement and fair child support, encourage responsibility and healthy families. What is joint custody? It is legal and physical. Legally, it means consultation between the parents about the major decisions affecting the child. Physically, it means the time spent with each parent should be as nearly equal as possible. It does not necessarily mean a 50/50 share of the time. A variety of arrangements are possible to suit the needs of the child.

It is not mandatory for everyone. No law, and no responsible person has ever said joint custody should be mandatory for everyone. But it should be the first choice. A judge always has the right, in considering the best interest of the child, to not grant a particular custody arrangement and the laws reserve that right to not grant joint custody if there is abuse or unfitness.

The National Council has carefully reviewed all the scientific literature on divorce and child custody up to the present and we find no scientific evidence to suggest that co-parenting is detrimental for the children of divorce, and a great deal of scientific evidence to suggest that the abandonment of children during the divorce process, both physically and emotionally, is the root cause of the major difficulties that children have in the post-divorce period.

A sampling of various studies, most of whom, I might mention, happen to be by women researchers, follows. Luepnitz found that fathers are as good as mothers at raising children. The children are not harmed by being raised by their fathers.

The implications of a study by Pojman are that joint custody can lead to lack of conflict in the child's life. Shiller indicates that joint custody boys were better adjusted than sole custody boys, even though the sole custody boys in her sample had maintained a regular visiting schedule with the fathers. The implication here is that visitation is not enough.

Santrock and Warshak found boys living with their fathers to be generally better adjusted and girls living with their mothers to be generally better adjusted than boys living with their mothers or girls living with their fathers. However, better than either of that was co-parenting. Potash says that by presuming joint custody as early as possible in the court process, parents are encouraged to focus on the child's needs and not their own arguing. We have got to get parents over that anger and frustration and bitterness of separation or divorce.

How do you get them over that and to focus on the child? You don't encourage them to fight in court. You don't encourage them to put their needs ahead of their kids. You encourage them to co-parent, and you do that with the support facility of required mediation. That means that you require, before they go to court, that they sit down with a mediator for at least one, two or three sessions to try to pull back from the brink before they fight. If we give that kind of signal to parents, there is going to be less trauma for divorce and possibly less money for my fellow attorneys. But many attorneys are starting to get the signal that parenting comes first, and they are turning to mediation, and they are educating themselves about what mediation is and the needs of children.

It has been said that fathers are winning half the contested custody battles. I don't know of any court that keeps that kind of statistic. In any case, I am not favoring father custody, a return to that, or a continuation of mother custody, sole maternal custody. We have heard this morning about the failures of the current system. We need something different. We need to emphasize co-parenting.

Some other studies: Rocklin found joint custody mothers had better relations with their ex-spouses and their children than did sole custody mothers. Osga found that joint custody girls were more satisfied than girls in sole custody. Guidubaldi and Perry and Nastasi, in a study just released, found divorce to be a severe stressor, long-time stressor for children. If you have any question about these studies, please call the researchers. Most of them are very accessible. They will tell you.

A study by Steinman, Zemmelman and Knoblauch presents a different view. It indicates joint custody fails. The trouble is this study was of joint custody families of only 1 year post-divorce when any kind of situation will fail. You need to study the long-term, 1½, 2, 3 years or longer, and you also need to compare joint with sole. The Steinman study did not do that.

Also, according to the Thoennes and Pearson study, Ms. Polikoff quoted, the bottom line I read in that is that "Fathers with joint custody, especially joint residential fathers with support obligations do a better job paying their support than those without joint custody." Call the researcher. I ask you to.

The litigation rate also decreases with joint custody, apparently due to the satisfaction that comes from the involvement of parents with their children. "Marriage and Divorce Today" reports that 77 percent of psychologists and psychiatrists who work with children now recommend a presumption of joint custody for antagonistic parents. The thinking seems to be this is the best way to get the parents past the shock and anger of divorce.

Despite the trend for joint custody, the States are still being very uneven in their treatment, which is one reason Holly Robinson, in the University of Cincinnati Law Review, suggests a Federal constitutional law creating a presumption of joint custody. She notes the Supreme Court has implicitly, if not explicitly, recognized that parental rights to retain custody of one's children is fundamental in nature.

Child support: in a sense all child support is transfer of income from one parent to another. Up to now, that had the virtue of being related to the needs of raising the child. There is a trend now to transfer income to make parents' income equal regardless of the needs of the child. Unfortunately, this could mean that the custodial parent would not pay any support for the child, because if there is that much transfer of income, and it is not related to the cost of raising the child, what have you got?

If it costs $5,000 a year to raise a child, and parent A earns twice what parent B earns, parent A should pay two-thirds of that child's support. No question. We favor child support, but make it two-thirds of the cost of raising the child. There are no good national studies of the cost of raising the child, especially when you consider the cost of the noncustodial parent. The noncustodial parent also has to have a place for the child—a house, transportation, food, shelter, yet these costs are never considered in considering child support.

If the child of the divorce can have the right to half the income of a parent, why not the parent of an intact marriage? If you are married, why shouldn't your children have a right to half your income? Shouldn't all children be treated equally?

It should also be noted that according to the Census Bureau, 76 percent of women with support orders receive full or part support. Haven't we all seen the false press statements that only 19 percent of support orders are paid or that only one in four parents with a support order get support. The drumbeat of misinformation creates a false and distorted picture—the result of lumping people with support orders and those without support orders into the same pot.

The people without support orders include widows. They include unmarrieds or nevermarrieds. There should be parenting there and support paid, but you can't list parents without support orders and those with support orders together.

The feminization of poverty is linked to the feminization of custody and to unequal pay. Let's work on both. I also want to mention "The Divorce Revolution," Lenore Weitzman's book. Hugh McIsaac, director of the Family Court in Los Angeles, states that although Ms. Weitzman raises important considerations, her book is flawed. The last data in her sample was collected in 1977. Joint custody studies conflicting with her position are ignored. Her analysis does not control for important variables and she does not see that parents can move on from the anger, bitter stage and learn to cooperate.

Visitation—we prefer to call it access. We are not visitors in our children's lives. Also, access emphasizes the child's right to parents. We recommend that every county in this country hire an access investigator such as was done in Prince Georges County, at the urging of the National Council for Children's Rights. Rita Ginn, who has been in Prince George's County less than a year, reports she is already able to resolve most access (visitation) problems over the phone.

If a father is showing up drunk or under the influence of drugs, she explains this is not appropriate behavior. If the mother is withholding access with a weak excuse like Johnny doesn't want to come out, she explains this is not appropriate. She is able to resolve most of these complaints so that parents do not have to go to court. What enormous savings on the taxpayers and the public and less trauma for kids. We need an access (visitation) investigator, in every county in this country to help stem this problem.

Economics: this is perhaps one of the most important points. Under Gramm-Rudman-Hollings, we are going to have to pay a lot of attention to where we are spending our money. The aid to families with dependent children and other Federal programs cost billions of dollars. There may be further cutbacks in all areas because of Gramm-Rudman-Hollings.

To the extent that families of divorce can become more self-sufficient and strong, they can handle their own problems with a minimum need for Government assistance. If we can encourage fathers to be more participatory, if we can encourage mothers to more greatly share their responsibilities, if we can more readily enforce fair child support and informally resolve visitation complaints, then we go a long way to make the families of divorce more self-sufficient. We have little choice but to do this if the effects of the budget process become as severe as predicted. Thank you.

[Prepared statement of David L. Levy follows:]

PREPARED STATEMENT OF DAVID L. LEVY, ESQ., PRESIDENT, NATIONAL COUNCIL FOR CHILDREN'S RIGHTS, INC.

The National Council for Children's Rights thanks you, Chairman Miller, and the members of the House Select Committee on Children, Youth and Families, for requesting our testimony today.

The National Council is a membership organization, formed in late 1984, to focus national awareness on the needs of children of divorce,and to serve local (state and county) organizations. We favor joint custody, mediation, fair child support and (access) visitation enforcement. Our conferences, written reports, audiocassettes and other materials, are structured to strengthen the divorced family in order to assist children, the victims of divorce. We distribute these materials and urge custody reform to the public, legislators, judges, attorneys, and other professionals involved in resolving divorce disputes.

Before our children reach the age of 18:

- 1 out of every 790 will be struck with diabetes,
- 1 out of every 101 will be struck with visual impairments
- 1 out of every 49 will be struck with heart diseases.
- 1 out of every 26 will be struck with asthma.
- 1 out of every 18 will be involved in accidents requiring hospitalization, and
- **1 OUT OF EVERY 4 WILL BE A VICTIM OF DIVORCE!**

Nationally, there are many programs that assist children who are victims of illness, crippling diseases and accidents. But virtually little is being done on a national level to help children who are the emotional victims of a divorce they did not ask for.

The figures are staggering: nearly 25% of our children before reaching the age of 18 will suffer the consequences of divorce. With divorce rates in this country at an all time high, this threat to our children's well-being must be addressed with the same intensity as any other crippling disease or threat to a child's mental health.

We must ease the burden that divorce places on our children if we want them to grow up to be happy, healthy and well-adjusted adults.

There are more than 100,000 custody battles each year, resulting in unnecessary lawsuits, long delays in outcome, exorbitant costs, alienation of children from one or both parents, and hostile feelings between parents. The child's life often becomes financially insecure, chaotic, and disrupted.

Do children of divorced parents need relationships with their parents that children from intact, healthy families have? Virtually all research says yes. But how do you provide such relationships when parents are divorced?

First, let us look at traits of healthy families. Researchers in this field include Dr. Nick Stinnett, Dr. Herbert Otto, and Dr. Jerry M. Lewis. These researchers arrive at essentially the same findings as does author and educator Dolores Curran. According to Curran, these traits include:

1. Communicating - the healthy family communicates and listens.
2. Affirming and Supporting - the healthy family affirms and supports one another
3. Respecting Others - the healthy family teaches respect for others
4. Trusting - the healthy family develops a sense of trust
5. Sharing Time - the healthy family has a sense of play and humor, balance of interaction among members, and shares leisure time
6. Fostering Responsibility - the healthy family exhibits a sense of shared responsibility
7. Teaching Morals - the healthy family teaches a sense of right and wrong
8. Enjoying Traditions - the healthy family has a strong sense of family in which rituals and traditions abound
9. Sharing Religion - the healthy family has a shared religious core
10. Respecting Privacy - the healthy family respects the privacy of one another
11. Valuing Service - the healthy family values service
12. Getting Help - the healthy family admits to and seeks help with problems

Look at these 12 traits and consider the form of resolution that we employ to settle marital disputes -- the adversarial process (Smith vs. Smith, Jones vs. Jones). Being adversarial is certainly not communicating, is not respectful of one another, is not trusting of one another, does not respect privacy, and on and on. However, counselling and mediation is more in line with the characteristics of healthy families and is more likely to keep the divorced family from abandoning children of divorce.

Again, joint custody and close, continual access to children (visitation) include more healthy traits than does sole custody.

What is the definition of joint custody? Joint custody is both legal and physical. Legally, it means both parents share in the major decision making, such as the area of the country where the child resides, religion, education, and medical matters. Physically, the time spent with each parent should be as nearly equal as possible. This does not mean an automatic 50-50 share of time. But the time should generally be no less than one-third with a parent. A variety of arrangements are possible to suit the needs of the restructured family after divorce, and such arrangements may be changed from time to time, as need requires.

What arguments support joint custody?

1) The National Council has carefully reviewed all the scientific literature on divorce and child custody up to the present, and we find no scientific evidence to suggest that co-parenting is detrimental for the children of divorce, and a great deal of scientific evidence to suggest that the abandonment of children during the divorce process, both physically and emotionally, is the root cause of the major difficulties that children have in the post-divorce period.

Here is a sampling of various studies --

Luepnitz studied father/custody, mother/custody, and joint custody. In her particular sample, she said there was no difference between the three custody groups, but nevertheless, the children maintained a good relationship with both parents. The implications of this are staggering, because Luepnitz is saying fathers are as good as mothers at raising children. The children are not harmed by being raised by their fathers.

Pojman studied boys in happy and unhappy intact families, joint custody, and sole custody families. The boys in happy intact families were, of course, the best adjusted. The boys in joint custody were almost as well adjusted as boys in happy intact families. The boys in sole custody and unhappy intact families were poorly adjusted. The implications are that joint custody can lead to lack of conflict in the child's life; hence better adjustment.

Shiller indicates that joint custody boys were better adjusted than sole custody boys, even though the sole custody boys in her sample had maintained a regular visiting schedule with the fathers. The implication here is that visitation is not enough.

Santrock and Warshak studied sole father/custody, sole mother/custody, and intact families. They found that children (ages 6-11) living with the same sex parent were better adjusted than those living with the opposite sex parent. In other words, boys living with their fathers are better adjusted than boys living with their mothers. Does this mean boys should be in sole paternal custody and girls in sole maternal custody? No, for joint custody is better yet, Potash says that by presuming joint custody as early as possible in the court process, parties are impelled to attend to the child's needs, thereby encouraging mature behavior and discouraging divisive, childish conflict.

Bowman's study showed that on a Quality of Coparental Communications Scale and Feelings Scale, joint custody parents have more positive relationships than mother custody parents. Joint custodial fathers also indicated significantly less court use than noncustodial fathers.

Cowan found that the relatively greater amount of time children spent with their fathers, the more accepting both parents were perceived to be, and the more well adjusted were the children.

Livingston studied mother/custody, father/custody, and joint custody. He found boys and girls in joint custody are better adjusted than children in either sole custody arrangements. The best adjusted children are in joint custody with the father as the primary residential parent: joint custody children also had higher self-esteem.

Nunan found that for young children under age 4, there seemed to be difference in self-esteem, between sole custody and joint custody. However, for children aged 4 to 6, the joint custody children had significantly higher ego strength, superego strength and self-esteem than single custody children.

Osga found that joint custody girls were more satisfied than girls in sole custody.

Rocklin, after studying joint and sole custody mothers, found joint custody mothers had better relations with their ex-spouses and their children than did sole custody mothers.

Guidubaldi, Perry and Nastasi, in studying whether the stress of divorce on children is transitory or long term, finds that it is long-term, i.e., "the most prevalent of the 'severe' stressors for children." This just-completed long term study should, state the authors, "dispel any doubts about the importance of support services for divorced-family children and their parents." We note that parents is in the plural.

A study by Steinman, Zemmelman and Knoblauch, presents a different view. It indicates joint custody fails. The trouble is that this study was of joint custody families only one year post divorce, when any kind of family, sole or joint, would show difficulties. One must study families 1½, 2, or 3 years or more post divorce for any meaningful findings. One must also look at different kinds of families post divorce, e.g. sole and joint, for comparison. Unfortunately, the Steinman, Zemmelman and Knoblauch study is only of joint custody one year post divorce, and not sole custody at that time frame. You will note that the other studies in this report do make such critical comparisons; not to do so scientifically flaws a study.

2) Joint custody is the most effective means of assuring child support payments. The bottom line of an HHS sponsored study by Thoennes and Pearson is that "fathers with joint custody, especially joint residential fathers, with support obligations, do a better job paying their support than those without joint custody." Such parents are also more likely to make extra direct payments to and for the child. Clearly, when the parents are around, so are their wallets.

3) The relitigation rate decreases. As indicated in Bowman's study, and in a study by Ilfeld. Ilfeld and **Alexander**, there is less relitigation with joint custody. Ilfeld, Ilfeld and Alexander find that joint custody parents back to court at one-half the rate of sole custody families. They conclude, "the custody arrangement most beneficial in terms of subsequent parental conflict is joint custody."

Marriage and Divorce Today reports that 77% of psychologists and psychiatrists who work in the custody area, and who responded to an MDT survey, support legal and physical joint custody for antagonistic parents. The reason seems to be that a presumption of joint custody early in the separation process (akin to the joint custody parents have during marriage), will "send a signal" that cooperation, mature conduct, and family strengths are prized by this society.

Joint custody is the fastest growing concept in 20th century family law. It was legal in only three states in 1980. Today, it is recognized by statute in 33 states. In 13 of those states, it is the presumption or preference: AZ, CA, FL, ID, MN, KY, LA, ME, MI, MN, NE,NV, OK. New Mexico upgraded its law just last month. In another 8 states, the highest court of the state has said judges may give joint custody. This is a total of 41 states in which joint custody (or shared parenting) is recognized.

Despite this trend, joint custody is still unevenly applied, often difficult to come by, and often quite expensive to fight for. Should we, because of this, retain our sole maternal custody--in which 90% of single parent homes are headed by women--return to the more traditional sole paternal custody, or opt for joint custody? Considering the overburdened single head of households--male or female--and the severe problems children face today, we think joint custody, and a relationship with grandparents and other kin, should be encouraged.

The House has passed a grandparents visitation bill. Perhaps it should take the suggestion of Holly Robinson, in the University of Cincinnatti Law Review, Vol. 54, No. 1, 1985 and pass a "federal constitutional law" creating a presumption of joint custody. Robinson notes that because the states have been free to "limit narrowly or to reject altogether the availability of joint custody," the federal government should act in this area. She notes the Supreme Court has at least implicitly, if not explicitly, recognized that the parental right to retain custody of one's children is fundamental in nature.

MEDIATION

The National Council was not asked for its views on mediation, but we must mention that mediation is essential for all custody disputes. This means that divorcing parents must try mediation before going before a judge. Larry Gaughan, Esq., Director, Family Mediation of Greater Washington, D.C., with offices in Arlington, Virginia, and other mediators find that mediation results in ninety percent satisfaction. That is, once couples understand the emotional and financial benefits for their children and themselves from mediation, ninety percent reach agreements. This process reduces litigation and court backlogs. In California, Delaware, Maine, Utah, Kansas, where mediation is mandatory, it has proven higher successful and cost effective, according to data gathered during the last five years. Only where couples cannot reach agreement through mediation are they permitted to go to court.

CHILD SUPPORT

In a sense, all child support is a form of income redistribution--the transfer of income from one parent to another. Up to now, that exchange had the virtue of being related to the needs of children.

Now that wage assignment is in place around the country, and Congress has required the states to adopt support guidelines, there is a move afoot to equalize income on a much grander scale--regardless of the needs of the child.

It is our prediction that in the coming months, the big question will not be whether child support should be paid indirectly to the custodial parent (as dictated by law and policy), but whether or not we shall forcibly equalize income by taking it from one class of people, the noncustodial parent, and giving it to another, the custodial parent.

Yet state laws everywhere say that child support is a responsibility of both parents. The leading court cases indicate the needs of the child are food, clothing, shelter, and schooling. Though add-ons could certainly occur, such as for day care, if needed.

Leading cases regarding child support conclude that non-custodial parents are legally obligated to pay only for the reasonable expenses of raising their children. These expenses are food, clothing, shelter, and the necessities of life (Hood v. Hood). The needs and financial status of both parents must be considered (Melzer v. Witzberger).

The basis of these and other cases are that one determines the needs of the child, then the parents pay in relation to their respective ability to do so. Thus, if the needs of the child are, say, $5,000 per year, and parent A has twice the net income of parent B, parent A will pay two-thirds of the $5,000, or $3,333. The Supreme Court of Oregon, in the Smith case, essentially follows this guideline.

Under income redistribution, however, there is no "need" determination and therefore no "cap" as to what the non-custodial parent pays. The non-custodial parent pays what the state orders, without regard to the child's needs.

Now please don't mistake us. The National Council favors child support. We deplore parents who deny child support as well as custodial parents who deny close, continuing, and regular parenting time to the non-custodial parent. And we seek to help develop sensible child support guidelines that are predictable and fair - so that sole custody litigation will not be fueled with a battle to increase child support.

The problem is that there is no complete study we know of which accurately reflects the true costs of raising a child, according to income levels of the parents, and which includes the costs of the non-custodial parent. The non-custodial parent now has to maintain two homes. He or she also must provide a home, food, transportation, and other costs for the child. What are those costs, and should they not be included as part of costs of raising a child?

Income redistribution also presents the problem of two classes of children; children of the first marriage versus children of subsequent and intact marriages. The children of subsequent and intact marriages can only obtain economic benefits from a parent if the parent agrees, e.g. 5 pairs of jeans versus one pair, a bicycle, a car. The court can not order the parent of an intact family to provide beyond reasonable needs. The parent of an intact marriage has the sole say as to how much he/she spends on their children.

Unlike children of subsequent marriages, children of dissolved marriages have a legal tie on their non-custodial parent's wallet. These children can go to court, via the custodial parent, to their demands for more money, the other class of children cannot.

The children of dissolved marriages provide no accountability as to how the money is spent, children of intact marriages do.

Is the establishment of two classes of children good for children? What effect will income redistribution have on second families and "second wives." Are we dealing with a radical change in public policy which should be subject to public debate, rather than slipping in under the guise of fair child support. If a child has the absolute right to half his divorced parent's income, could the child of an intact marriage make a similar claim to the income of a parent who is not divorced?

Under alimony, the recipient pays income taxes on the amount received. With child support, the payor pays the taxes. Beginning with the 1985 tax return, the federal child deduction (now worth $1,040 and possibly worth more in 1986) goes, in the absence of an agreement to the contrary, to the parent who cares for the child more than one-half of the year. No wonder income redistribution in the guise of child support has been called the "tax free alimony of the 80's."

It should be noted that, according to the Census Bureau, 76% of women with support orders receive full or part payments. Yet haven't we all seen in the press statements such as "only 19% of support orders are paid," or "only 1 in 4 parents with a support order gets support?" The drumbeat of misinformation creates a false and distorted picture, one in which parents with a support order and those without a support order (unmarrieds, widows with children, and others) are all lumped together, so as to give a false report of the largely responsible fathers of divorce. As to non-payments, there are many reasons, some legitimate, some not. Ron Haskins, who has done major HHS research, found that fathers in the lowest quintile in his study of North Carolina, were not paying full support, but they were paying all that they could afford.

There is little doubt that women do not fare as well economically in our society as do men. The "feminization of poverty," however, is linked, we believe, to the feminization of custody, as well as to unequal pay. The situation is not helped by sexist statements that hold fathers as the culprits.

Hugh McIsaac, Director, Family Court Services/Conciliation Court, Los Angeles County Superior Court, in a review of Lenore Weitzman's Divorce Revolution, states that although she raises important considerations, her book is flawed. He notes that the last data in her sample was collected in 1977, joint custody studies conflicting with her position are ignored, her analysis does not control for important variables, and she does not see that parents move on from the angry, bitter stage and can learn to cooperate. He states she also does not analyze the overburdening of the "primary parent," California's joint custody law is misrepresented, and her recommendation of a "primary parent standard" ignores the reality than in today's world with 63% of all mothers working outside the home, the "primary caretaker" may be the baby-sitter, or day care center.

Parents have to stretch their dollars so much during marriage, that both parents often have to work. Yet somehow, miraculously, after divorce, fathers are supposed to have it easy. Some do, but many do not. There are no doubt differences in income, but the difference is probably not nearly so great as Weitzman would indicate, according to national longitudinal studies, such as Michigan's Panel Study of Income Dynamics. Dr. Ron Haskins says the PSID shows much closer income levels post-divorce than Weitzman indicates, especially if one figures most white women remarry, and thus re-enter the middle class, a fact Weitzman apparently overlooks.

VISITATION

Non-custodial parents do not like the word "visitation." They generally prefer the word "access." Non-custodial parents are not "visitors" in their children's lives (even less are they "absent parents.) The word "access" also focuses on the child's right of access to two parents, rather than the parent's "right."

The National Council recommends that every county in the country hire at least one access enforcement staffer. This person would investigate access enforcement complaints. Every county has numerous child support investigators. The access investigator would try to informally resolve access complaints. If the non-custodial parent was showing up drunk or under drugs, the investigator would explain that this is inappropriate conduct. If the custodial parent was making excuses, e.g. "Johnny is busy," "Johnny is out," etc., the investigator would explain the custodial aprent's responsibilities.

Such investigators exist in the Friend of the Court system in Michigan, in Travis County (Austin) Texas, and in Prince George's County, Md., where an investigator for access complaints was hired in 1986 at the request of the National Council for Children's Rights.

Although she has been in office only for part of a year, the investigator, Rita Gunn, reports that she is receiving a number of complaints, and that by talking to the parents (usually over the phone), she is able to resolve most of those complaints, informally.

It is possible that the Federal government may not reimburse states and counties for visitation expediters as they do for child support expediters. But if visitation (access) enforcement saves taxpayers dollars, the taxpayers will applaud the initial outlay of funds, because the returns will save taxpayers dollars many times over.

The savings will come from higher child support collections, more involved and satisfied parents, from fewer court battles that clog the courts (requiring more courtrooms and judges), from fewer administrative personnel to handle support collections, and other savings. There must be an administrative remedy short of going to court for contempt.

If the parents do go to court, the investigator can serve as an independent third-party assessor of the facts, to assist the judge.

ECONOMICS.

Perhaps one of the most important points has been left to last, and that is, the implications of Gramm-Rudman-Hollings. At present, the AFDC (Aid to Families with Dependent Children) Program and other federal and state programs cost billions of dollars. There may be further cutbacks in all areas because of Gramm-Rudman-Hollings. To the extent that families of divorce can become more self-sufficient and "strong," they can handle their own problems, with a minimum need for government assistance. If we can encourage fathers to be more participatory, if we can encourage mothers to more greatly share their responsibilities, if we can more readily enforce fair child support and informally resolve visitation complaints, we may go a long way to making the families of divorce more self-sufficient. We have little choice but to do this, if the effects of the budget process become as severe as predicted.

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13. John Guidubaldi, Ed.D., Joseph Perry, Ph.D. and Bonnie Nastasi, M.S., *Long-term Impact of Divorce on Children: A Report of a Two- and Three-year Follow-up*, Kent State University, 412 Whithall, Kent, OH 44242, Phone (216) 672-2928.

EQUITABLE CHILD SUPPORT

1. E. J. Espanshade of the Urban Institute, Washington, D.C., in his 1984 study "Investing in Children," says low income families spend $75,000 rearing a child to its 18th year, middle class families spend about $82,000, and upper class families spend about $98,000.

2. Some leading cases around the country regarding child support include:
   - *Smith v. Smith*, 626 P. 2d 342 (OR 1981).
   - *Hood v. Hood*, 335 N.W. 2d 349 (SD 1983).
   - *Melzer v. Witsberger*, 480 A 2d 991 (PA 1984).

3. Income Redistribution - Two states which have income redistribution are Wisconsin and Delaware. Under the Wisconsin child support plan, 17% of a non-custodial parent's net income is paid for the first child, and under the Melson formula of Delaware, the figure is also about 17%, but arrived at by a complicated computation.

In neither state is there a cap or limit to percentage of the non-custodial parent's income that goes to child support.

If a non-custodial parent should earn $35,000, 17% of that would be $5,950. $5,950 paid over 18 years is equal to $107,000. According to Espanshade's figures, the custodial parent at the high income level, would not be contributing anything to child support, but would, moreover have $9,100 in disposable income.

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Their report is "Child Custody, Child Support Arrangements and Child Support Payment Patterns," HHS Grant No. 16-P-00262-8-01. Jessica Pearson, Ph.D. and Nancy Thoennes, Ph.D., Center for Policy Research and Research Unit of the Association of Family & Conciliation Courts, 1720 Emerson Street, Denver, CO. 80218.

RON HASKINS

Dr. Ron Haskins' report is "Estimates of National Child Support Collections Potential and Income Security of Female-Headed Families, HHS Grant #18-P-00259-4-01. Haskins, of the Bush Institute for Child and Family Policy, University of North Carolina at Chapel Hill, is currently on the staff of U.S. Sen. Paul Simon, Washington, D.C.

Additional information of any of the above materials may be obtained from the National Council for Children's Rights, 2001 O Street, Washington, D.C. 20036. We also publish written reports, model bills, and audiocassettes on various topics, relating to children of divorce.

Chairman **Miller**. Thank you very much, and thank you to all of the members of the panel for their testimony.

Laurie, you started us off in this panel, and I was just wondering what your thoughts were as you listened to the various witnesses or if you have anything that you wanted to share with us.

Ms. **Dixon**. Yes; I'd like to say that I have definite reservations about joint custody of children. For one thing one of my friends had joint custody, and also her parents were separated for about 10 years or something. They didn't actually get divorced for a long time, and with the joint custody and with the not actual legal divorce, for all that time until her parents actually finalized their divorce, she wanted them to remarry; and this was a big problem with her, because her parents were seeing other adults, going out on dates and so forth, and she could not handle that at all. It was very bad for her psychologically. I don't know if this happens in all joint custody or what. I just say that that is the problem.

Also, I am not sure if parents can work out joint custody. Two adults, especially once they are separated, could have different ideas on how to rear a child. For instance, another friend's parents started out with joint custody; and her father even lived a block away, so it wouldn't even be much of a move for her and her sister. But they had big problems because the mother and her father had very different ideas of how to bring up the children. Now even though her father lives only a block away, because they had a big dispute on how to raise the children, a big fight, she no longer sees her father at all. She has not spoken to him for 5 years, and it started with joint custody.

I don't know whether, if he just hadn't had the idea that he had a say in how to raise his children, he would still be having contact with them. I do, however, think that what we must look at is the financial needs. I think that is very important. Divorced children are at a financial disadvantage.

For instance, I know that my sister is going to college right now, and when considering what financial aid she deserves, they figure in my father's income, which is substantially higher than that of my mother. They do not even look at my parents' divorce agreement which specifically states that my father is not going to pay for college for any of his children, but is going to continue to pay child support, which is much much smaller than the cost of college. They don't look at that. They figure in his income, and they say that my sister doesn't deserve financial aid—except they give her a job. That is all they say she deserves.

Obviously, we are having a lot of difficulty getting her through college, especially since she is going to a very expensive college, and I think we must look at the financial implications and try to rectify those.

Chairman **Miller**. Dr. Wallerstein, Laurie, in her article—I don't know if you have had a chance to read it, but also in her testimony, pointed out that a number of the young people that she interviewed were interested in telling the media or society that they weren't a lot different than other children.

Your research and some of the other research represented at the table and in clinical programs suggest that in fact certainly over the long term there are some differences. How do we put those two together in terms of if you look at the anecdotal statements of a number of young people that Laurie interviewed and herself that say, no, and those who are suggesting that there is some long-term adverse ramifications when divorces aren't handled properly.

Dr. **Wallerstein**. I think maybe we have been listening to Laurie differently. I rather think everything Laurie said corroborated everything that I am finding. She talked about—I think I have said that a great many of these youngsters are remarkably perceptive, are wonderfully compassionate, are very understanding of a whole lot of issues. They have a measure of independence that youngsters of intact families often don't have. They have had all kinds of experiences which have equipped them in ways—partly perhaps because they have been less protected.

I think Laurie talked in a very moving way about her feelings about her mother and how much she appreciates the devotion and dedication and sensitivity of her mother. All of that applies to a very large number of young people. It doesn't apply to all of them, and I think I am seeing a whole spectrum.

I am talking about those that Laurie represents, and incidentally a lot of what she is saying about going to college exactly corroborates some of my findings that many of these youngsters are disadvantaged when it comes to school. She is among the fortunate few where the father's child support is continuing past the age of 18. In our study none of the youngsters had any child support after 18, but the issue of college is something that she speaks to also out of personal experience.

Chairman **Miller**. Certainly in California there is an issue in the State legislature about continuing child support.

Dr. **Wallerstein**. Yes.

Chairman **Miller**. In the same children that you studied, do you know if there was any informal arrangement, as opposed to legal arrangement for child support?

Dr. **Wallerstein**. I know exactly the informal arrangement. I know exactly what fathers paid and what fathers didn't pay. I have all of those figures. Only 20 percent of these youngsters of college age had support from their fathers. I have been speaking to the fathers for over 10 years. The men were not saying that they couldn't pay. The men were not pleading poverty. They were saying that they had fulfilled their legal obligation by the time the youngster reached 18 and indeed they had. These are men that had paid child support regularly and fully.

They felt that after that they were through. Now these were also men who saw their youngsters, so the issues really is the extent to which fathers feel that this is part of their legal obligation to these youngsters. I think many of these men would have paid. We had men who were making $200,000 a year. I interviewed a youngster at Berkley whose father makes $200,000. She was in her senior year and she was carrying three jobs, and I said to her, you know, "How do you explain all this?" And she said, "Well, my dad's too busy, and you can't fight City Hall. There is nothing to do about this." She and the father had contact, so I think we are into an issue of what the community expects from its citizens, and we are into an issue that does have to do with social policy.

These youngsters would have clearly—the son of a physician, the daughter of a physician—incidentally, I should say that boys were supported more often than girls, which is another issue that these young people would clearly have been supported had the family remained intact.

I want to say that of the youngsters coming up through high school like Laurie, there were 34 of these children who were still in high school at the 10-year mark. Only three of those students had college education as a given. Now that exercises, I would argue, a chilling effect on the aspiration level of young people when they are most vulnerable, and when we think of what most of us do in families, we spend a lot of time talking about "when you go to college," or "what career are you going to pursue," or "I want you to go to the college that I went to," and so on, and there is some sort of blunting that occurs in the father/child relationship so that in some way that feeling that obtains in an intact family doesn't obtain in the same way, although it does in some instances, when there is a divorce.

Chairman **Miller**. That is my point and is related to my initial question. You correctly state, and Laurie confirms from the discussions with those she interviewed in high school, that they have a rude awakening coming after school because unlike their peers who continue to get education and support, they will not.

Ms. **Wallerstein**. Yes. I think Laurie is arguing for being looked at as different and deviant, and I understand that, and I am fully sympathetic with that, but they are indeed in a more vulnerable position than a child in an intact family by psychological and social and economic standards. Many of them do extremely well, but a very large number—in my figures 42 percent don't do anywhere near as well as Laurie represents.

Chairman **Miller**. That figure in and of itself will have a profound effect on society especially if we continue the rate of divorce, and the numbers adversely affected, 42 percent, continue. It should be a frightening number.

Ms. **Wallerstein**. It is a frightening number.

I would like to add that I am seeing youngsters in a suburban county in northern California where the economic conditions in life are better than they are lots of other places in the country, and I think we are seeing divorce under the most advantageous circumstances, which is why my findings, I think, are so dismaying, sir.

Chairman **Miller**. Dr. Kalter, what has been the reception at other schools. Is there an interest in securing a program like yours in additional schools? Are they starting to become aware of the kind of positive results that you seem to be able to achieve in the early period of this intervention?

Mr. **Kalter**. Yes, we have. You have to remember there are a lot of these sorts of programs that spring up because school social workers and school psychologists, principals, helping teachers, recognize a need. They are not quite sure what to do about that, and I think that one of the reasons our program has gotten such good reception is because we have come from a fairly comprehensive conceptual model which can put into place specifically how those groups might be useful, how to use them and how not to use them.

We have been in 10 schools right now in southeastern Michigan. We have people using the program in Wisconsin, in western Michigan and Toronto that have picked up our manual and just kind of gone with it, and the feedback we get from them is that they are having good experiences with it. We are asked directly to do far more than we are able to do given our person power.

Chairman MILLER. That is the trouble with success.

Mr. KALTER. We like being asked, and we do continue to provide not only direct services, but supervision of others who are using a model that is either identical to ours or fairly similar to ours.

Chairman MILLER. Thank you. Congressman Coats.

Mr. COATS. Thank you, Mr. Chairman.

Laurie, thank you for your testimony, and I am happy that you have adjusted and cope so well and were able to relate that to us. My question is a followup to the chairman's initial question to Dr. Wallerstein, I am a little confused over whether we are dealing with a small percentage of the children with problems of adverse consequences of divorce or a large percentage. I clearly thought I heard your testimony that it was a significant problem.

You used the word, "significant." I am quoting, "A significant number of them continued to suffer the effects of divorce a full decade after the marital rupture. Again, a specific number of our sample were pursuing vocational goals far below their intellectual capability." Forty-two percent were functioning poorly, 15 percent uneven, which is 57 percent of the children you studied.

I am trying to get a handle on how large the problem is, how significant it is, how many people fall in Laurie's category and how many people fall outside it. We need to know that in terms of determining our response to the magnitude of the problem.

If Laurie's testimony is generally accurate for most children of divorce, perhaps no response is needed. Perhaps there is not a problem.

Ms. WALLERSTEIN. Well, I don't—is the question to me or to Laurie?

Mr. COATS. Yes.

Ms. WALLERSTEIN. I don't think Laurie is proposing—I am very impressed with Laurie. I would add her to our faculty in a couple of years, but I don't think Laurie is proposing that she speaks from a scientific standpoint. She is talking about the young people whom she interviewed in her own social circle, and I am sure that she speaks accurately for herself and for that group.

I think that if we are talking about a million children a year, a million new children a year from divorced families since 1973, then we are talking about an entirely different group than Laurie's, and there is considerable evidence from other quarters, for example, regarding these youngsters being at risk. There is evidence about the proportion that they appear disproportionately in treatment populations all over the country in private practice and psychiatric clinics. Dr. Kalter has a study that he did at the University of Michigan that speaks to this issue. They have a much higher chance of being referred for psychological help within the schools.

There is a 1975 study by Felner which speaks to that. In our own work where I have looked at the clients that come to family agencies and so on, over 60 percent of the children who are seen there for treatment are from nonintact families. If one goes to inpatient facilities where children are hospitalized for psychiatric reasons, one finds an average of 80 percent of those children are from nonintact families, so we are looking at an at-risk population, which there is no way that Laurie can speak to.

Now, in my own 10-year study, we are looking at two separate issues. One is the economic and social disadvantaging, which is the college issue. Not all those children are psychologically in trouble. I think they are underachieving. Underachieving is not the same as psychologically in trouble. On the other hand from the point of view of the society, it is a terrible loss. For a young man to have no college education in this society is to disadvantage him for life, so that is a whole separate issue.

The concern that I have especially among the young women, but it is true among the young men, too, about this great anxiety about ever finding a lasting relationship, the fear that relationships between men and women are unreliable, I take very seriously in terms of the responsibility of this society and what we need to do, and the amount of anxiety that these young people experience at the point of entry into young adulthood by virtue of their fear of not being able to achieve a lasting relationship, I submit, is very serious.

Mr. COATS. Is there an age correlation between the adverse and negative consequences and the time of divorce?

Ms. WALLERSTEIN. Yes, there is.

Mr. COATS. Could you just briefly outline that.

Ms. WALLERSTEIN. Yes, and it changes over time. That is one of the advantages and disadvantages in following something over many years. What you see depends sometimes on when you look. Initially, at the time of the marital rupture, the youngest children seem to suffer the most; that's preschool children, and after that the adolescent group, and we are seeing the strongest responses at that time. But in my 10-year study I am finding that the youngsters who were older at the time, those who were 10 years and older at the time of the marital rupture, are having the hardest time as they enter at the end of adolescence and as they enter young adulthood.

They are really haunted by memories of the early conflict. You speak to them; they remember it as if it was yesterday. It is startling how a 21-year-old will say, "I remember my mother was rocking, sitting up all night in the rocking chair and she was crying, and I was crying, too." And it comes out as if the whole thing was really fresh and green and vivid as if there has been no 10-year lapse in that, so that I am very concerned at the moment with the older youngster than the adolescent and what appears to be a lack of structure in many of those families and partly because everybody is working, and partly because the adults in the neighborhood are all at work and so on, so that there is a sense in these youngsters of a divorce shadowed adolescence and all of these having cut into their play or school time and a sense of neediness and deprivation and anxiety as they enter into adult life.

Mr. COATS. Just one last question, and I open it up to the panel. We are focusing this morning on the consequences of an act that has already taken place, at least for a significant number of the population or the children at risk there are some pretty severe adverse consequences.

Mr. Levy indicated a referenced work by Delores Curran and Nick Stinnett about family strengths, and this committee has held a hearing on healthy families and what we can learn from them, hopefully preventing this from happening. Have any of you given any thought or done any research in the prevention end, to keep them from entering into your studies or entering into your treatment programs. Is there something we can do on the front end to prevent some of these problems from occurring? I open that to anybody who wants to address the question.

What should we be looking at at the Federal level? Obviously, we can't intervene in an interpersonal relationship, but is there something we should be looking at from the Federal level or from society's level to look at the prevention?

Ms. DIXON. May I answer the question?

Mr. COATS. You sure can.

Ms. DIXON. I think what would be very helpful at a teenage level is some sort of relationship course in school, and this could be required by the Federal Government or something like that, because I think that a lot of children are not learning how to relate with other people. It is not covered in school, and at home they just have bad relationships and they don't know what to do about it.

I talked with a social worker who works with children of divorced families, and she said that some of them were in a school where they were having a course like this that was talking about just relationships and how to relate and how to communicate and how to be sensitive and understanding, and that they loved this course; that nobody has ever done this before, and it is something that is very helpful. Just a relationship course would really help, I think.

Mr. LEVY. I would echo Laurie that I think we could begin more in the schools and at home at an early age to discuss family planning. What does it mean to become a parent and what will parenting mean? Pleasures, yes, but there are enormous responsibilities. Many young people haven't the faintest idea of what they are in for, so we need to do more gentle informing at an early age in the schools.

At the divorce end, the National Council of Children's Rights is seeking to develop a program begun in Ballston Spa, NY, called Banana Splits, which gets kids of divorce into school counseling in peer groups to discuss what is happening to them. The purpose is to help children academically and to prevent drop-outs.

Mr. KALTER. Well, we have been running a prevention program for about 4 years; that is, prevention in terms of children's negative reactions to divorce for those who will have them, and, again, that is by no means all or even necessarily even a majority, but some substantial portion of children. I think it is helpful to remember that one of the best predictors of whether or not someone will divorce as an adult is whether or not their parents divorced prior to their 16th birthday. That is the single best predictor of whether or not someone will enter a marriage which will ultimately be disrupted by divorce.

Mr. COATS. And I guess we are searching for ways that will ultimately break that chain.

Mr. KALTER. Exactly.

Mr. COATS. And we see that whether it is alcohol, drug abuse, teen pregnancy. We see that a problem in one generation begets the problem in the next generation in alarming percentages. My question is how do we break that chain.

Mr. KALTER. I think that one of the ways we would hope to break that chain is to work with youngsters whose parents have been divorced on conflicts which may then continue that intergenerational sequence of events. I think it is very difficult if you use education in the narrow sense of the word, to reach 15-year-olds and 12-year-olds about family planning. I think that that is kind of difficult. The words may be there, but the music sure will not be.

On the other hand, some of the difficulties which can lead to long-term adjustment problems, relationship problems, problems in trust and intimacy, if those issues can be worked out through the use of human service interventions in the schools and elsewhere, I think that we stand a better chance of trying to break that cycle, and it is an intergenerational cycle.

Ms. WALLERSTEIN. I would like to just, if I may, just add that the center that I direct, the Center for the Family in Transition, was founded on the basis of some of these findings to develop preventive interventions. We are seeing a very large number of the people who file for divorce within the county and one of our major efforts is to see whether we can't help establish that divorced family in such a way—the postdivorced family—so that it won't be detrimental to children, it won't be detrimental to adolescents.

One of my strong recommendations is that we not think in terms of a brief intervention, as Dr. Kalter said. I think what we need is a continued presence in the lives of people as an available presence, and among the people who call us a great deal are some of these adolescents to whom we are a familiar presence because we have seen them at the height of the crisis, and at various stress points along the way, they pick up the phone and they call us, or we have contact with the children, or we have contact with the mothers and the fathers over the years.

I think these families need a whole set of specialized services that we are in the process of creating, including mediation and specialized counseling that will be an enduring part of the children's growing up years.

Chairman MILLER. I know we have a vote on, and I will sit through the vote, but Congressman Cobey, if you want to ask a question now before you run and vote.

Mr. COBEY. I don't have a question, but I do have a comment that I don't agree that we should have a Federal mandate, Laurie, but I agree with your concept. I have wondered all these many years why we don't teach in the schools the most important thing, and that is how to relate to other people, and yet we teach all of this knowledge, technical knowledge, history and English, and yet the most important thing is how we can relate, and I hope that our school boards and our States will move toward building that kind of course into our curriculum. I think it is absolutely essential.

Chairman MILLER. Thank you. I want to welcome Congressman Cobey to the committee. This is his first hearing as a new member of our committee. We look forward to your service on the committee.

Nancy, let me ask you a question with respect to your testimony. You raised two issues with respect to custody. One with respect to mothers who flee for their lives in a physically abusive situation, and others in which sexual abuse of children has arisen. You indicate that there are times in which this works to the detriment of the mother, at least in these two paragraphs, suggesting that she is clearly the innocent party here. Either she is the one who is being abused or she is trying to shelter a child who is being sexually abused.

Given the work of this committee, that is a rather troubling allegation. I just wonder if you might be able to expand on those paragraphs.

Ms. POLIKOFF. Yes. With respect to battering, physical battering of the woman, it is commonly considered by judges that if a man is beating his wife but not beating his kids, that that fact is not relevant in deciding the question of custody. There is a case we are involved in right now that has to do with the custody of a child after the mother was killed by the father after years of physical violence, and what the judge said in refusing to find the father unfit, was that he could be the worst husband in the world and still be the best father. These were under circumstances where he had killed the child's mother.

Now understandably, that is extreme, but it is a reflection, I believe, of an ideology that fails to recognize what is going on in a family where there is physical violence from the father to the mother and is certainly relevant to determining what is in the best interest of the child.

As I am sure this committee is aware, there is a very strong movement in the country in support of ending violence against women and dealing with battering in the family, and it is largely as a result of that that just really in the past year or two in response to this problem, there have been a couple of laws passed in the States, most recently in Arizona, creating a presumption that if there has been violence in the family against the spouse, that the perpetrator of the violence should not get custody of the child. It is almost inconceivable that we have had to go to our legislators to ask them to do something that ought to be perfectly clear to everybody, but it simply hasn't been, and that has been what has led to the problem.

With respect to battered women and their disputes over custody, the psychological literature on battered women and on batterers—has suggested that the same need to exercise power and control, that is at the heart of violence in the family, operates here. When the woman has finally said she has had enough and is finally going to leave and is finally going to use whatever protection is available to her to stop being beaten, that same dynamic turns itself to her most vulnerable place, which is her children, and that is part of why there are so many disputes over custody and visitation, that rise in the context where there has been battering.

Briefly, with respect to child sexual abuse, this is a theme that comes directly out of my work in the last several years of getting repeated and repeated numbers of phone calls from women. We have encouraged people in our society to recognize that child sexual abuse exists, and we have encouraged everybody to take steps against it. We have enlightened mothers who in the past might not have understood what was happening, to look for symptoms and see what is going on.

It is a terrible irony and a terrible catch-22 that when upon society's invitation to bring this serious problem out of the closet essentially, mothers do come forward, that then they are treated as though they are on trial and are actually making false allegations in order to get some kind of upper hand in the custody dispute. So it is as though we have gone part of the distance, which is to say this is a problem. We want people to look for signs and look for symptoms of it, but then in this instance where there is a custody dispute, we put mothers in a situation where they risk losing custody all together if they raise the fact that there is this abuse. It is really a very tragic situation.

Chairman MILLER. Thank you.

Mr. LEVY. May I comment on that briefly?

Chairman MILLER. Pardon?

Mr. LEVY. May I comment on that briefly?

Chairman MILLER. Yes.

Mr. LEVY. It may be hard to believe, but this comes from the American Humane Association in Denver, not the American Humane Society. American Humane Association keeps long-term statistics on child abuse. Most child abuse of all types, including neglect, is perpetrated by women. Now, the reason is probably because children are with women most of the time. I only point this out to be careful not to make this into a sexist argument that men are all the abusers and to isolate one area. It is much more complex. There are enough abusers to go around on both sides of the aisles that we need to protect children and not just turn it into a male/female argument.

Children need protection from abuse no matter who is doing it.

Chairman MILLER. We are going to hear a little bit more about economics in the next panel, but just quickly two related issues. One has been raised by Dr. Brody regarding divorced families and diminished income, and also this notion that young women of divorce are more reluctant in terms of entering into a relationship, or are anxious about a lasting relationship.

When you are thrown into a situation where you spend a good portion of your life with your mother living on the margin, and understand the economic peril and the need for economic independence, whether that shades your considerations, or if there is any evidence that that would shade your consideration before you enter into another relationship before you achieve your own ability to acquire economic independence?

Dr. Brody.

Mr. BRODY. Well, there is some evidence to indicate that women who grew up in a divorced household do, indeed, have more negative attitudes about marriage, have more negative attitudes about men in general, and I think the real risk comes, however, for those women and those men who have gone through not just one divorce, but who have experienced multiple divorces during their childhood.

If we are really concerned about breaking a string, as Mr. Coats alluded to, what we really need to be concerned about now is the high number of remarriages that are failing, so that children, now, by the time they leave the home, have not experienced one divorce, but two divorces. The best data that I have available indicates that 50 percent of remarriages, close to 50 percent of remarriages fail.

Let's take a step back for a second and think about the implications for a child or an adolescent of going through not one family disruption where there has been a parent who psychologically has not been available for a while while they recover, where they probably had to move, where they had to go to a new school, where they lost contact with an attachment figure, but think about that child's reality going through that twice, and think about how that jades their perceptions of adult relationships in addition to, undoubtedly, undermining their competencies to function as capable adults.

So if we really want to be concerned about, at the Federal level perhaps, breaking a string, let's really think about what can we do to break this string of serial marriages which we see happening with greater and greater frequency. It is only a guess, but I believe——

Chairman MILLER. In fact the eligible population for that event is expanding.

Mr. BRODY. Right.

Chairman MILLER. Because of the first-time divorce rate.

Mr. BRODY. Right. So the pool is expanding, but I think—again, this is just a guess, not based on any scientific data, but my own intuition. The reason we see people entering into many remarriages has to do with economics, especially for women. They have to rear families. They are living often times at the subsistence level, and in order to escape this situation, remarry.

Chairman MILLER. Correct me if I am wrong, but there also appears to be substantial evidence that a woman stays in a bad marriage, or a violent marriage for economic reasons. In my work with battered women, time and again in interviews the economic thing just rushes right to the foreground.

Mr. BRODY. Absolutely. I have no disagreement with that. But we also have a large pool of women who probably are remarrying just to make ends meet and then they get themselves in a bad situation which in turn affects the development of their children. If I had to hypothesize what kinds of children are going to grow up to fear adult relationships it would be that pool of children who have been through multiple family disruptions.

Chairman MILLER. Thank you.

Ms. DIXON. May I say something?

Chairman MILLER. Sure.

Ms. DIXON. I'd like to address the issue of remarriage. I think that actually there should be a totally different hearing on that, because as I talked with——

Chairman MILLER. I'm sorry, I didn't hear your last sentence.

Ms. DIXON. I think that remarriage should probably be dealt with in a separate hearing. I think it is definitely a separate issue.

Chairman MILLER. There has been a lot of suggestion of that. Thank you.

Ms. DIXON. I would like to address it briefly, though, because when I talked with students whose parents were divorced, most of the people I talked to were in remarried families, and the noncustodial parent was also in a remarried family. Most of the problems that they talked to me about were with the step families and the remarried families, so I think that is a significant problem that should be addressed, but probably not in this hearing.

Chairman MILLER. We touched upon blended families at an earlier hearing, with a family from Maryland. We discussed step families, step parents, and the difficulty they can have. Just for example, elementary schools, often aren't equipped to recognize blended families and the children in them.

Mr. Kalter.

Mr. KALTER. I just wanted to briefly state that since divorce started getting studied a fair amount in the social sciences, there have been attempts at various times to explain it away. The early arguments where it is all socioeconomic issues, the subsequent argument was that it was all loss, the most recent one that I have seen has been it is all interparental hostility. If we can only fix that piece of it, then everything will be fine.

I think one impression I would certainly like to leave the committee with is, at least our sense, that what divorce means is a whole series of life changes. It means that there are going to be a lot of different things that youngsters will have to cope with in addition to the usual issues of growing up. Only part of it has to do with the disruption at the time of the parental disruption. After that you have moves, loss of peer groups, changes in school.

All too often in over 50 percent of the cases, you have a loss of contact with the nonresident parent, substantial long-term loss of that contact. You do have economic difficulties. You do have remarriage and the stress that entails, and the dating that precedes that and the children which may come afterwards, half siblings and step siblings. There is no sociology of expectations of how to relate to your half sibling or your step sibling.

There are a whole series of events which are triggered or ushered in by that "divorce" that legal divorce, and I think that together they constitute a very complex mosaic of life changes which are difficult to disentangle.

Chairman MILLER. In America, we are accustomed to sticking things on the refrigerator door, memos and places to go and times to pick up members of the family, what have you, and the other night I was at a friend's house looking at the refrigerator door—actually I was looking inside of the refrigerator. I was looking at a list of the soccer team of one of their daughters, and none of the contacts or few, if any, of the contacts for the children in case of pick up or carpooling or injuries, what have you, had the same surnames as their children, and it kind of caught me because the county I represent is like Corte Madera. I mean it is a high income fast growing, affluent area.

I know many, many of those kinds of families, people I have grown up with or come in contact with since being in office.

Family units are unique, and if you know people who are undergoing family stress, whether it is related to a divorce or separation or any kind of family stress, you start to form opinions and characterize them and their behavior and their children and their treatment and back and forth. You also find out that on an anecdotal basis things look worse or look better than they may be if you had scientific evidence, but in the scientific studies you find out, again, that it is a very diverse population that is impacted by divorce.

With respect to custody, why would anyone make a presumption about what you are going to do or not going to do in terms of a law about joint custody or father custody or mother custody? What screams out at me a little bit from this testimony is perhaps greater need for people to spend more time in making those specific determinations, family by family.

I was very involved, and have been for some years, in foster care. We did a study in Alameda County, out in the San Francisco Bay area. It was done by Professor Stamford, and indicated that the judges, in reviewing the status of those children, spent an average of 6½ minutes to make a determination about the next 6 months or 1 year status of that child.

As I hear some of these discussions arguing one way or another on custody determinations, a lot of it seems to suggest that the time and understanding and ability to get to know the relationships and the circumstances are not there. Obviously the number of divorces overwhelms the judicial system to some extent, but they don't all go to court. They are not all adversarial, and they are not all unfriendly, and they aren't all unsuccessful. It seems to me that some emphasis needs to be put on a greater understanding of what the dynamics of this family are when you start to make decisions that so affect income and the well-being of the child for any given period of time. It is so particular to each family I cannot for the life of me see why there would be any presumption in that system.

Various members of the panel have raised considerations that they think should be given weight or not given weight. If you care to respond, I would be interested.

Mr. LEVY. We have a presumption in fact right now of sole maternal custody. Ninety percent of families in this country are headed by women.

Chairman MILLER. I understand that. What I am talking about is some notion that you would build a presumption into the law. Presumption in fact can be changed, given personalities. Why would you write a presumption into law?

Mr. LEVY. Because you must change attitudes and laws, to encourage parents, especially fathers, to do more parenting postdivorce; instead of just treating fathers as walking wallets, who are not psychologically involved with their children. We are sending the wrong signal to fathers, and we have to change that with attitudes and laws, so as to benefit children.

Chairman MILLER. Anybody else?

Ms. WALLERSTEIN. I would like to speak a little bit to that. First, I want to say very clearly that none of the studies cited by Mr. Levy was done with a population where the joint custody was court-ordered or came out of mandatory mediation; that all of those studies were done on parents who elected, voluntarily, to do joint custody, and I think it would be inappropriate by any standard to extrapolate from a voluntary population to a presumption that would be imbedded in the law, so that I think that one of the problems in this whole field, and I can say this clearly to Mr. Levy, because I have been so identified with the importance of fathers, and the importance of children's development with the presence of the father, that I think building a presumption into law would be an experiment with thousands and thousands of American children that I think would be wrong and would be unfair to those children because we have no knowledge that would support that presumption where there is one reluctant or unwilling parent. I think that is very clear.

I do believe that a family in divorce should have the same rights to select custody and to make its own arrangement, should be encouraged to do so; that mediation services should be available; that counseling services should be available, and that these people need all the help they can get in terms of making their decision, but I see no reason to have a presumption that would force families into a particular mold, and I am very encouraged by your statement, Mr. Miller.

Chairman MILLER. Anyone else?

Ms. POLIKOFF. I would only add a slight other piece which is related to something I said in my testimony, which is that the rules for deciding custody don't exist in a vacuum outside of the economics, and if there is one point that I think is particularly important because most custody decisions are made voluntarily, ultimately, between the parties, and a very small minority are decided by judges, that I think an understanding of the bargaining climate in which all the aspects of a divorce are settled, including custody, is very important and probably needs to be the subject of much greater study.

As long as we have a situation in which mothers who have been primarily the childrearers in the family, in those families where it has been the mother who has been the childrearer prior to the divorce, her vulnerability to being willing to trade away all of the economic entitlements for her children and possibilities for herself is very very great, so that what I think we wind up with when we look at a lot of the agreements where mothers do have custody of their children by agreement of the parties, are inadequate financial arrangements for those children.

As we know from the various people who have spoken, that is not in the children's interest. So I think that regardless of whether you talk in terms of presumptions, we have to look at the rules for how custody is decided to make sure that they don't have this side effect of severe economic detriment that winds up then not being in the children's interest.

Mr. KALTER. A further comment on that, if I may. I think there is, as near as I can tell, there probably isn't disagreement about the fact that fathers are important to the well-being of their children, and that the loss of the non-resident parent, which is usually the father in this country, has clear detrimental effects on at least some sizable portion of youngsters.

The question that you ask is whether or not that particular remedy, building into law some presumption one way or another, might satisfy or correct those difficulties, and in that instance I find myself with Dr. Wallerstein suggesting that that not be built in. I think it disregards the kind of diversity and special circumstances and uniqueness which in fact most social science data do not well address. Clinical data do; social science data do not do well with that.

Chairman **MILLER**. Thank you very much to all the members of the panel for your time and your testimony. I think you have been very very helpful to those of us on this committee. And, Laurie, a special thanks to you for coming in and sharing your personal experience with us.

Next the committee will hear from Dr. Lenore Weitzman, who is an associate professor of sociology, Stanford University; Severa Austin, who is the director of the Bureau of Human Resources, Department of Health and Social Services, Madison, WI; Dr. Saul Hoffman, who is an associate professor of economics, University of Delaware; and Dr. Dale Keeton, who is the president of the Vienna Family Therapy Center, Vienna, VA.

Welcome to the committee. Again, your prepared testimony will be put in the record in its entirety, and we would like you to proceed in the manner in which you are most comfortable. Also, one of the luxuries of being the second panel, if you would like to comment on what you have heard in the first panel in terms of deepening our understanding of this subject, I want you to feel free to do so. Dr. Weitzman.

STATEMENT OF LENORE J. WEITZMAN, ASSOCIATE PROFESSOR OF SOCIOLOGY, STANFORD UNIVERSITY, CALIFORNIA, ASSOCIATE PROFESSOR OF SOCIOLOGY, HARVARD UNIVERSITY, CAMBRIDGE, MA

Dr. **WEITZMAN**. Thank you. I am Lenore Weitzman. I am currently an associate professor of sociology at Stanford University in California, and will assume a similar position at Harvard University in Massachusetts in the fall.

For the past 10 years, I have been director of a large-scale research project to examine the social and economic effects of the present legal system of divorce. The results of this research were recently published in a book entitled, "The Divorce Revolution—The Unexpected Social and Economic Consequences for Women and Children in America."

My testimony today will address three questions. First, why does divorce create nationwide problems for children and families? Second, what are the causes of these problems? And third, what can be done about it?

I want to say at the outset that I am not going to offer a "quick fix." There simply are no quick fixes in this area. But I do believe that there are things that Congress can do—and things that Congress should do—and I hope that some of the policies that I am going to suggest will become the focus of your attention in the future.

But first the problem.

Why is divorce a problem? It is a problem because the present legal system of divorce creates extreme economic hardships and cumulative disadvantages for many divorced women and their children.

For the past 10 years, I have been engaged in empirical research on the effects of the new divorce laws and have examined both the no fault system of divorce and the changing rules for dividing property and awarding support. This research was based on an analysis of five sources of data: random samples of 2,500 court dockets over a 10-year period and systematic indepth face-to-face interviews with systematic samples of hundreds of attorneys, and judges, and divorced men and divorced women between 1974 and 1985. Contrary to Mr. Levy's statement, the last sample of judges' questionnaires and interviews were obtained in 1981 and followup meetings with judges and lawyers were conducted in California up to 1985, just before the date of publication.

The major finding of my research, which is reported in much more detail in my book "The Divorce Revolution," is that the new divorce laws, laws that were passed by good people with good intentions, have had unexpected and unintended consequences. Instead of creating more fairness and equity, they have created widespread economic hardships and have led to the systematic impoverishment of many divorced women and children.

My research reveals that the new legal rules for getting a divorce, and the new legal rules for dividing property and awarding alimony and child support, end up shaping radically different economic futures for divorced men on one hand, and for the divorced women and the minor children and their household on the other. Ninety percent of the children of divorce currently have their primary residence in their mother's household.

My data show that women and the minor children and their households experience a sharp decline in their standard of living after divorce—a 73-percent decline in the first year after divorce. Their former husbands, in contrast, are usually much better off after divorce and have a higher standard of living. They experience an average of a 42-percent rise in their standard of living in the first year after divorce.

In the book "The Divorce Revolution" I analyze the impact of divorce by a number of factors such as the age of the spouses, the length of the marriage, and the family income level. These analyses show that two groups of women are most severely hit: young mothers with young children and older homemakers in marriages of long duration.

But the bottom line is painfully consistent for all women of all ages and all social classes. Divorce thrusts them into a cycle of downward mobility and cumulative disadvantage. It is often a financial disaster.

My findings are echoed in research throughout the United States. Divorced women and children have become the new poor.

This leads directly to my second question. What are the causes of these economic hardships that women and children experience at the point of divorce? My analysis points directly to the legal rules, to the rules for dividing property, and to the legal rules and practices for awarding and enforcing child and spousal support.

While many of these laws are the result of State legislation, others, such as the way pensions are divided and the way support is enforced, are heavily influenced by Federal legislation.

Recent years have brought increased awareness of the feminization of poverty and the growth in single-parent female-headed households. So that part of what I am saying is well known. But what is missing from most of the prior analyses is the direct causal link between the economics terms of divorce decrees and the rise in female poverty and child poverty in America. Divorce is the single most important factor in the feminization of poverty and in the childrenization of poverty. More than half of the poor families in the United States are headed by single mothers, and divorce is the major cause of becoming a single mother.

I think we have this mythical conception that most single mothers are the result of unwed parenthood. But only 20 percent of the single mothers are the result of unwed parenthood. The vast majority—80 percent—are the result of divorce and separation. In fact, 50 percent are the result of divorce alone. Poverty for many women and children begins with divorce. And many more middle class women and children who are not living in poverty are living in near poverty, and drastically reduced economic circumstances.

Why do the legal rules create this poverty? Let me be more specific. There are two types of rules that create economic hardships. First, there are the rules for defining and dividing family property. Second, there are the rules for awarding and enforcing support. At the heart of both issues is the fact that marriage is not really being treated as an economic partnership, or as an equal partnership. When it comes to dividing property and to awarding post-divorce family support, women and the children and their households are getting less, much less, than their equal share.

Consider first the issue of property. In most States in the United States marital property is divided unequally at divorce with women and children receiving less than half of the family's tangible assets. The wife's share in most states is typically closer to one-third. Even when property is divided equally, as it is in a minority of States like California where an equal division is mandated, the result may not be equal.

Since women have the responsibility of children in 9 out of 10 divorces involving children, to divide property equally between the husband and wife typically means that one-half of the family assets are awarded to one person, the husband, while the other half are awarded to an average of three people, the wife and two children.

Rules that require an equal division of marital property between husband and wife also ignore the children's interest in family property. In California my research revealed that the major unexpected result of a mandatory equal division of property is the forced sale of the family home. This means that children are forced to move, and to change schools, neighborhoods, and friends just at the point when they most need stability and continuity.

There is an even more fundamental problem with the way property is divided at divorce. And that is related to the changing nature of property in our society.

In the past, property and, of course, marital property, consisted largely of tangible assets: Homes, cars, and television sets. Today, increasingly, the major forms of property in our society—and the major forms of property acquired during marriage—are assets and entitlements acquired as part of career—what I call career assets. Career assets include pension and retirement benefits, a license to practice a trade or a profession, and Government benefits such as Social Security.

Conceptually, there are two kinds of career assets. First there is the enhanced "human capital" or enhanced earning capacity that individuals gain during marriage. Second, there are benefits and entitlements of employment, such as pensions and Social Security.

My data show that these new forms of property are typically worth a lot more than the tangible assets acquired during marriage. In fact, one career asset, enhanced earning capacity, may be more valuable than the tangible property a couple acquires. We found that the average divorcing couple has only $20,000 in net tangible assets. Yet it would take them less than 1 year to earn that much.

So earning capacity, one career asset, is typically much more valuable than the fixed assets or the "real property" acquired during marriage.

My research also reveals that these career assets, these new forms of property, are not divided equally upon divorce. In fact, in many cases they are not divided at all, but are simply left with the husband.

It is no wonder that many of the divorced women we interviewed expressed feelings of injustice and unfairness, for they had devoted their best efforts to a marital partnership in which both partners invested in the husband's career assets, but at divorce that career was often treated as "his" rather than as "theirs", and the wives feel unfairly deprived of their share of the fruits of the couple's joint efforts.

Such feelings are not confined to older homemakers. They are also expressed by young mothers who had given priority to their families rather than to their own careers. This is one area in which Congress has already set an example by passing the pioneering pension legislation that Pat Schroeder introduced for foreign service officer's spouses. This system, unlike the system for civil service pensions which is contingent upon State courts, clearly establishes the principle of treating marriage as an equal economic partnership.

Similar principles underlie proposals to establish an earning sharing program that would allow Social Security credits earned during marriage to be divided equally between the spouses, such as the one introduced by Representative Mary Rose Oakar.

These two issues—pensions and Social Security credits—illustrate the potential benefits of changing the law so that new forms of property are shared and divided between spouses. Unfortunately in the present rules for divorce, career assets and other new forms of property are often not divided equally. And that is why the present rules for divorce contribute to the impoverishment of women and their children.

The second set of legal rules that creates problems are those governing support, both alimony and child support. Here, too, the bottom line is that family income is divided extremely unequally with the mother and child unit, who have greater needs and need greater resources, receiving a much smaller share of the pie. I know that members of this committee are familiar with the data on inadequate awards and high rates of noncompliance, and I also know that many of you have taken the lead in the child support amendments of 1984 which were a major step forward. So I will be brief.

But let me mention two important problems in this area.

The first problem is alimony, or spousal support awards, which are awarded to a very small minority of divorced women nationwide. The latest U.S. Census data show that only 14 percent of the divorced women were awarded alimony. Since the vast majority, 86 percent of divorced women, are not awarded any alimony or postdivorce support for themselves whatsoever, most of them do not have an opportunity to invest in their own human capital and to increase their earning capacity after divorce.

Federal support for education in general, and in retraining programs for displaced homemakers in particular, could go a long way to help this population break out of the vicious cycle of low-paying dead end jobs. It would help them to get started on the road to improved economic self-sufficiency. In addition, tax treatment of alimony is critical in creating incentives for support awards, but some of the recent changes in the Tax Code may be creating disincentives instead.

The second problem, which was raised by Dr. Wallerstein this morning, concerns child support for children over 18. In most States, child support ends at age 18, just when college expenses begin. So the major financial burden for college expenses typically falls on the mother. The remedy is quite simple: A redefinition of the age of majority as 21 for the purposes of child support for full-time students. That would make a tremendous difference for many children of divorce—and for their mothers—because both parents would be sharing the expenses for a college education.

As you can see, I have already begun answering my third question: What can be done about this. Although there is considerable need for legal reforms on the State level, I would urge you to view the problems that divorce creates as national problems. We are living in a global society. These problems require national solutions and cannot be solved most effectively by piecemeal legislation on the State level.

At the heart of my suggestions for Federal action is a very simple principle: Treating marriage and the assets acquired during marriage as an equal economic partnership. Since I know that my time is short, I would just like to list some of the possibilities that I see: First, reforms of the Social Security System to incorporate earning sharing; second, remodeling the Federal pension systems along the lines established for foreign service spouses; third, facilitating postdivorce income sharing and investments in the nonemployed or underemployed spouse through tax treatment of alimony, and fourth, including lump sum alimony; facilitating investments in the human capital and earning potential of homemaker spouses and the children of divorce through education and Federal support for education and training programs and through Federal support for child care.

In summary, I am urging a focus on Federal rules and programs that treat marriage as an equal partnership, not just a divorce, but during marriage as well. For example, the working parents bill takes this approach during marriage.

These measures would go a long way in helping to transform the cumulative disadvantages that women and children experience after divorce into a set of cumulative opportunities. Those are the key words: changing cumulative disadvantages and economic hardships into cumulative opportunities. These measures, along with the others I have suggested in my written statement and in the book "The Divorce Revolution," would also help restore fairness and equity to the present system of divorce. Thank you.

[Prepared statement of Lenore Weitzman follows:]

PREPARED STATEMENT OF PROF. LENORE J. WEITZMAN, STANFORD UNIVERSITY DEPARTMENT OF SOCIOLOGY, STANFORD, CA

Mr. Chairman and members of the Select Committee, I am Lenore Weitzman, an Associate Professor of Sociology at Stanford University in California. For the past ten years I have directed a large scale research project analyzing the social and economic effects of the present legal system of divorce. The results of this research were recently published in a book entitled The Divorce Revolution: The Unexpected Social and Economic Consequences for Women and Children in America (The Free Press, 1985).

My testimony today addresses three questions:

1. First, why does divorce create nationwide problems for children and families?
2. Second what are the causes of these problems? and
3. Third, what can be done about it?

I want to say, at the outset, that I am not going to offer a "quick fix." There are no quick fixes in this area. But I do believe that there are things that Congress can do -- and should do -- and hope that some of these policies will become the focus of your attention in the future.

But first, the problem.

I. WHY IS DIVORCE A PROBLEM?

Divorce is a problem because the present rules governing divorce create economic hardships and cumulative economic disadvantages for many divorced women and their children.

The present rules for divorce are the result of a "legal revolution" that has occurred in the United States since 1970. In that year California instituted the first no-fault divorce law in the United States. The new law not only changed the rules for divorce; it also changed the rules for dividing property and awarding support. Responding to the widespread dissatisfaction with the abuses of the old law, and recognizing the "emerging equality" of women, the reformers tried to fashion a fair and equitable divorce law that treated wives as full and equal partners in the marital partnership.

But the consequences of these reforms have extended far beyond the intent of the drafters. Ends may influence beginnings. In a society where one-half of all new marriages are expected to end in divorce, a radical change in the rules for ending marriage inevitably affects the rules for marriage itself and the intentions and expectations of those who enter it.

The divorce law reforms have done just that: they have created new expectations for the behavior of husbands and wives in marriage and they have redefined the scope of their responsibilities as spouses and as parents. They are, in short, transforming the nature of legal marriage and the definition of family commitments in our society.

Along with the new legal rules for divorce the past two decades have brought soaring and sustained high divorce rates and an increased social acceptability of divorce. As a result of these three trends, a new system of divorce has become woven into the fabric of American family life. Today a couple entering marriage faces an even chance of getting divorced, and a child born today faces a 60 percent probability of spending some time during his or her minority in a single parent family (Weitzman, The Divorce Revolution, 1985: p. xvii).

A. The Legal Revolution In Divorce

Before 1978, every state required fault-based grounds, such as adultery or mental cruelty, for divorce. Rooted in the English common law, these laws reinforced the traditional marriage contract in which the husband, as the family breadwinner, and the wife, as the homemaker and mother, were committed to sexual fidelity in a lifelong partnership. In order to obtain a divorce one party had to prove that the other had violated that contract--that he had failed to support her, or that she had not performed her wifely duties, or that one of them had been cruel or sexually unfaithful.

A couple could not simply decide to end their marriage by mutual consent. The legal system of divorce required an "innocent" party and a "guilty" party. The innocent spouse had to produce evidence of the other's adultery or cruelty to justify the court's granting the divorce. The court would then provide redress for that innocent victim by compensating her (or him) with alimony (if the wife was the "innocent" party, as she typically was) and a larger share of the marital property.

In the late 1960's there was widespread dissatisfaction with this fault-based system of divorce: it forced spouses to become adversaries, and it encouraged and exacerbated marital mudslinging. After all, since the "innocent" party was rewarded financially, it "paid" to charge one's spouse with all the horrible deeds one could remember (or imagine). Often the parties had to distort the truth and lie in order to satisfy the legal requirements for fault. For example, if there were no adultery, the evidence might be "manufactured" by staging an adulterous scene with private detectives and photographers waiting conveniently in the wings.

In some cases the legal process was "merely" a charade: but in others it was ugly, demeaning and humiliating, especially when friends and relatives were brought into court as witnesses and were asked to corroborate the charges. Finally, the acrimonious legal process increased the antagonism between divorcing spouses and made it more difficult for them to cooperate in post-divorce parenting.

In this climate, California's no-fault law, which was instituted in 1970, was welcomed as a major step forward. It sought to remove acrimony and hostility from the legal process by eliminating the need for any fault-based grounds for divorce. Instead one party's claim that "irreconcilable differences" had caused the breakdown of the marriage was sufficient to justify a divorce. The new law requires no grounds, no fault and no consent. Since financial awards could no longer be based on who-did-what-to-whom, new standards for dividing property and awarding support were created to treat men and women fairly and equally. Property would be divided equally and support for wives and children would be based on "need."

With this seemingly simple move, California pioneered sweeping reforms that quickly spread to other states. While not all states adopted the California model (and completely abolished fault), by 1985, just 15 years later, every state but South Dakota had adopted some form of no-fault divorce law (Weitzman, The Divorce Revolution, 1985).

Although these laws were designed to create more equity, they have had unintended and unfortunate consequences: they have created substantial inequalities between divorced men and women and have led to the impoverishment of many divorced women and their children.

B. The Unintended Consequences

When I began my research, I shared the reformers' optimism and assumed that only good could come from an end to the vilification and sham testimony of the old fault-based system of divorce. How much better, I thought, to end a marriage in a nonadversarial fashion that sought to reduce the acrimony and hostility and to encourage parents to fashion fair and equitable financial arrangements for themselves and their children.

Equally important, the new law promised equality between men and women. Here, finally, was a law that recognized wives as equals in the marital partnership. California was the first state to guarantee wives an equal share--a mandatory 50 percent--of the property accumulated during the marriage.

When, in the early days of my research, I began to confront cases of upper middle-class women who had been married for twenty to thirty years and were being cut off with only a few years of alimony and hardly any property, who were being forced to move so their homes could be sold, and who, with little or no job experience and minimal court-ordered support, were headed for near-poverty, I assumed that they were the exceptions--the women who had incompetent lawyers or the wrong judge.

Similarly, when I first confronted cases of young mothers who were awarded so little child support that it was not enough money to cover the cost of day care, and who then told me that the child support order "wasn't worth the piece of paper it was written on" because they couldn't collect the support the court had ordered, I again thought that these women were the exceptions.

But as the systematic data from the court dockets became computer printouts with statistically significant results, it became clear that these women were not the exceptions. They were part of a systematic pattern: the systematic pattern was that divorce was causing substantial hardships for most women and their children. Somehow the elimination of grounds, fault and consent, and the institution of gender-neutral standards for financial awards were having unanticipated and unfortunate consequences.

The major unintended result of the divorce law reforms has been widespread economic disruption for divorced women and their children. The new rules for alimony, property, and child support, end up shaping radically different economic futures for divorced men, on the one hand, and for divorced women and their children on the other.

My research reveals that women and the minor children in their households (90% of the children live with their mothers after divorce) experience a sharp decline in their standard of living after divorce: their standard of living drops 73% in the first year after divorce. In contrast, their ex-husbands experience a rise in their standard of living--an average 42% increase in the first year after divorce (Weitzman, The Divorce Revolution, 1985: p. 338).

C. My Research

For the past ten years I have been engaged in empirical research on the social and economic effects of the divorce revolution. My analysis has focused on the new divorce laws: I have examined both the no-fault system of divorce and the changing rules for dividing property and awarding support.

This research was based on five types of data:

--systematic random samples of 2,500 court dockets over a ten-year period,

--systematic in-depth interviews with 169 family law attorneys,

--similar interviews with 44 family law judges,

--a comparative sample of English legal experts,

--systematic in-depth interviews with 228 divorced men and women.

This research design is unusual because it utilizes a variety of sources instead of relying solely on judges or lawyers (as legal scholars tend to do) or solely on divorced men and women (as sociologists and psychologists tend to do). It also has the advantage of a systematic data base in the random samples of divorce decrees drawn from court records.

Although most of the data were collected in California, the findings are relevant to the entire United States because the major features of the California law have been adopted by other states.

D. Major Findings

While it is impossible to summarize the results of a decade of research in this brief testimony, I would like to highlight some of my major findings. (I hope some of you and your staff will also read the "real" text in my recent book: Lenore J. Weitzman, The Divorce Revolution: The Unexpected Social and Economic Consequences for Women and Children in America (Free Press, 1985).

The major finding of my research is that the new divorce laws--laws that were passed by good people with good intentions--have had unexpected and unintended consequences. Instead of creating more fairness and equity, they have created widespread economic hardships and have led to the systematic impoverishment of many divorced women and children.

In the book The Divorce Revolution I analyze the impact of divorce by a number of factors (such as the age of the spouses, the length of the marriage, and the family income level). These analyses show that young mothers and older homemakers are the two groups of women who are hit the hardest. But the bottom line is painfully consistent for women of all ages and all social classes: divorce thrusts them into a cycle of downward mobility and cumulative disadvantage. It is often a financial disaster.

My findings are echoed in research throughout the United States. Divorced women and their children have become the new poor.

This is why divorce is a problem: divorce creates nationwide economic deprivation and social disadvantages for women and children in America.

Before we can consider solutions it is important to underscore the direct causal link between the economics of divorce and the feminization of poverty. Divorce is the single most important factor in the feminization of poverty in America (Weitzman, The Divorce Revolution, 1985: pp. 351-356).

While recent years have brought increased awareness of the "feminization of poverty" and the growth in single-parent female-headed households, what I have found missing from most of these analyses is the direct causal link between the economic terms of divorce decrees and the rise in female poverty and child poverty in the United States. More than half of the poor families in the United States are headed by a single mother--and divorce is the major cause of becoming a single mother. (Only 20% of the single mother-headed households are a result of unwed parenthood: 80 percent are the result of divorce and separation.) Poverty, for many women and children, begins with divorce. And many more middle-class mothers and children of divorce are living in near-poverty and drastically reduced economic circumstances.

This leads directly to my second question: what are the causes of the economic hardships that women and children experience at divorce?

II. THE CAUSES: WHY DOES DIVORCE CREATE ECONOMIC HARDSHIPS FOR WOMEN AND CHILDREN?

Why have laws that were designed to create more equitable settlements ended up impoverishing divorced women and their children?

One reason is that the court's interpretation of "equality" in divorce settlements often produces unequal results by ignoring the very real inequalities that marriage creates for men and women. It also ignores the economic inequalities between men and women in the larger society. Thus, a woman who has been a homemaker and mother during marriage may not be "equal" to her husband at the point of divorce. Rules that treat her as if she is equal (in the mistaken belief that she can quickly enter the labor force and become the economic equal of her husband) simply serve to deprive her--and their children--of the support they need.

In fact, it is marriage itself that typically creates the different structural opportunities that men and women face at divorce. Even in two-earner families most married couples give priority to the husband's career, while the wife assumes the major responsibility for the home and children. As a result, her earning capacity is likely to be impaired while his is enhanced.

If the divorce rules do not give her a share of his enhanced earning capacity (through alimony and child support awards), and if divorce rules expect her to enter the labor market as she is, with fewer skills, less experience, and no time for retraining, and if she continues to have the major burden of caring for young children after divorce, it is easy to understand why the divorced woman is likely to be much worse off than her former husband. Faced with expectations that she will be "equally" responsible for the financial support of their children and herself, she has been unequally disadvantaged by marriage and has fewer resources to meet these expectations.

A second reason is that an ostensibly equal division of property is not in fact equal when women have the responsibility for child care in 9 out of 10 divorces that involve children (Weitzman, 1985). To divide the property equally between husband and wife typically means that one-half of the family assets are awarded to one person, the husband, while the other half are left to an average of three people, the wife and two children.

In addition, in order to divide property equally judges often require the forced sale of the family homes. This increases the disruption, dislocation, and distress in the lives of many women and children. In fact, the children's interest in marital property is simply ignored in the present legal system of divorce.

A third factor is that the elimination of grounds, fault and consent have reduced women's bargaining leverage to secure adequate financial awards. Since the wife was usually the "innocent" party under the old law, she was in a stronger position to negotiate support for herself and her children (in return for her agreement to file for and obtain the divorce her husband wanted).

A fourth factor is that the courts are not recognizing wives and mothers as equal partners in the marital partnership in alimony or spousal support awards. Even women who have been housewives and mothers in marriages of long duration, and who are fifty years old at the time of the divorce, are routinely denied continued support. Although my research finds that both men and women in marriages of long duration assumed that they were forming a partnership, and both assumed that they would share equally in the fruits of their joint endeavors, when it comes to divorce the courts are redefining the terms of their "contract": they are treating the husband's income as "his" rather than as "theirs," and are telling her that she must find a job so that she can support herself.

It is no wonder that the older homemaker often feels betrayed by the new laws. She was promised, by both her husband and our society that their marriage was a partnership and that he would share his income with her. Instead the courts have changed the rules in the middle of the game--after she has fulfilled her share of the bargain. (Actually, it is the last quarter of the game because she can never recapture the years that she devoted to her family and she has passed the point where she can choose another life course.)

A fifth factor is the courts' failure to award and enforce child support--despite the "law on the books." Courts award inadequate amounts of child support which leave the primary custodial parent, who is the mother in 90 percent of the divorce cases, with the major burden of supporting the children after divorce. Yet even these minimal child support awards go unpaid. Enforcement is lax and less than half of the fathers fully comply with court orders to pay child support. My research revealed that men who earn between $30,000 and $50,000 a year are just as likely to fail to pay child support as those who earn less than $20,000 a year (Weitzman, The Divorce Revolution, 1985: p. 296).

The sixth and final cause of the economic disparity between divorced men and women lies in the courts' failure to understand the changing nature of property in our society. Today the most valuable assets that most couples acquire during marriage are career assets--the major wage earner's salary, pension, medical insurance, education, license, the goodwill value of a business or profession, entitlements to company goods and services, and future earning power. Although there is considerable variation in the extent to which states recognize the assets (see Weitzman, The Divorce Revolution, Chapter 5), most states exclude some or all of them from the pool of property to be divided upon divorce. If the courts fail to award the wife a share of the career assets built and acquired during the marriage--her husband's enhanced earning capacity, pension, professional license, and health insurance--then the major assets of the marriage are not being divided equally, and the husband is allowed to keep the family's most valuable assets.

In summary, the net effect of the present rules for property, alimony, and child support is severe financial hardships for most divorced women and their children. They typically experience a dramatic decline in income and a drastic decline in their standard of living. Even women who enjoyed comfortable middle- and upper-middle-class standards of living during marriage experience sharp downward mobility after divorce.*

The major economic result of the divorce law revolution is the systematic impoverishment of divorced women and their children. They are the new poor.

In the next section I will be more specific and discuss the legal rules and practices for property, alimony and child support. But before we turn to the specifics, let me underscore the role of federal legislation in both spheres. While many of the laws governing divorce are the province of state legislation, other laws, such as those regulating the division of pensions, and those regulating the enforcement of child support, are heavily influenced by federal legislation. This is both appropriate and inevitable because the economic problems of divorce are national problems--and some of them require nationwide remedies.

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*In fact, it is the women from families with predivorce incomes of $40,000 a year or more (and, in general, older women) who experience the greatest relative deprivation when their postdivorce standard of living is compared to that of their former husbands. (See Weitzman, The Divorce Revolution, 1985, Table 28, p. 333.)

At the heart of the rules for dividing property and awarding post-divorce support are two simple principles which the present laws were designed to uphold: the principle of treating marriage as an equal economic partnership and the principle of creating equality of results after divorce. The present system of divorce often ignores both principles: marriage is not being treated as an equal economic partnership. And when it comes to dividing property and awarding support, women and the children in their household are getting less--much less--than an equal share.

Consider first the issues of property.

A. Marital Property: Definition and Division

In most states in the United States marital property is divided unequally at divorce with women and their children receiving less than half of the family's tangible assets. (The wife's share is typically closer to 1/3) (Weitzman, The Divorce Revolution, 1985: 104-109).

Even when property is divided equally, as it is in a minority of states that, like California, require an equal division, the result may not be equal. Since women have the major responsibility for child care in 90 percent of the divorces involving children, a 50/50 division of family property typically means that the husband receives one-half of the family assets while the remaining 50 percent is shared by the wife and children.

1. The family home

In addition, when the family home is the family's only recognized asset, judges usually order it sold so that the property can be divided equally. (The traditional practice was to award it to the wife, especially if she had minor children.) The loss of the family home, and the subsequent residential moves it necessitates, disrupt children's school, neighborhood, and friendship ties, and create additional dislocations for children (and mothers) at the very point at which they most need continuity and stability.

Thus although "equal" division of property sounds fair, when it forces the sale of the family home it increases the disruption, dislocation, and distress in the lives of women and children. And it means they are forced to shoulder a disproportionate share of the financial hardships of divorce.

The disposition of the family home in California is quite different from what is seen as the "equitable" solution in England. Among the English experts we interviewed, the first priority was given to preserving the family home for the children. For example, in responding to a typical case in which the home was the only family asset, one solicitor explained the way the English courts would approach this case:

> "The wife would get the house because she has to make a home for the children, and the children come first--you don't want their home to be disrupted. You want to stabilize the situation for them."

The underlying principle in the English approach is that "children come first" because they are the most vulnerable members of the divorcing family and they most need societal protection. As one English judge said, "It's my job to protect the children."

In contrast to the English emphasis on the children's welfare as the court's first priority, the "interests" of children were rarely mentioned in our interviews with California lawyers and judges. Marital property was defined solely in terms of the relative rights of the husband and wife, and it was divided between the two of them.

It is not only younger mothers and their children who suffer from the forced sale of the family home. Some of the most tragic victims are older homemakers who lose the home they have lived in for twenty-five or thirty-five years, as well as their whole social structure in a forced move to the other side of town. As one woman said, "I felt as if I was being evicted from my entire life."

Those older homemakers who were still maintaining a family home for college age and post college "children" felt that the eviction also disrupted their continued parenting. As one woman described her reaction:

> "I had lived in that home for 26 years and my three children still considered it their home. But the judge ordered it sold... He said he had to follow the letter of the law... I married at a time when a woman who spent 30 years of her life raising a family was worth something... (but here,) I was thrown out of my own house."

2. Career assets: the new property

But there is an even more fundamental problem with the way property is divided at divorce. The assets and property that husbands and wives acquire during marriage are not, in fact, being divided equally at divorce.

This is partially a result of major changes in the nature of property that has occurred in our society. Husbands and wives are increasingly investing in careers and human capital--most particularly in the husband's education and career. The new property resulting from this kind of investment is often the family's major asset. Yet this property is typically not divided equally upon divorce. In fact, in many states it is not divided at all. It is simply presumed to belong to the husband. But if the law allows men to retain their career assets--their professional licenses, their health insurance, and their earning capacities, then their wives are not in fact being awarded an equal share of the joint property.

"Career assets" is the term I coined to refer to the tangible and intangible assets that are acquired as a part of either spouse's career or career potential. The term "career assets" includes two types of assets: investments in one's "human capital," or the ability to earn a living in the future; and the benefits and entitlements of employment, such as pension and retirement benefits, medical and hospital insurance, and entitlements to company goods and services. Many of these assets have been acquired in the course of a marriage, in the same manner as traditional assets are acquired and they are often the most valuable assets the couple owns.

Consider these facts: we found that the average divorcing couple has only $20,000 in fixed assets when they divorce. Yet the average couple can earn more than the value of their assets in less than one year (Weitzman, The Divorce Revolution, 1985: 59-61). This means that the value of the couple's career assets--indeed the value of their earning capacity alone--is much greater than the value of their physical property.

These data have important policy implications. If one partner builds his or her earning capacity during the marriage, while the other is a homemaker and parent, the partner with the earning capacity has acquired the major asset of the marriage. If the earning power--or the income it produces--is not divided upon divorce, the two spouses are left with very unequal share of their joint assets.

An awareness of this inequity was echoed over and over again in our interviews. As one homemaker-mother who was married to a college professor for 30 years explained:

> "It's not that I regret my life or didn't enjoy what I did. But it was supposed to be a partnership--a fifty-fifty split. It isn't fair that he gets to keep it. It isn't fair for the court to treat it as his... I earned it just as much as he did."

It is no wonder that many of the divorced women we interviewed expressed feelings of injustice and unfairness. They had devoted their best efforts to a marital partnership in which both partners invested in the husband's career. But at divorce, the career is often treated as "his"--rather than as "theirs"--and they feel unfairly deprived of their share of the fruits of the couple's joint efforts.

Obviously, the issue of dividing career assets is equally important for younger couples: in many cases one spouse's education, training or professional license is the only asset acquired during marriage.

Four findings of my research suggest the ways in which career assets affect the extent to which marital property is divided equally (Weitzman, The Divorce Revolution, 1985, Chapter 5). First, we found that most married couples acquire career assets in the course of their marriage in the same way that they acquire other assets (which the courts recognize as marital property). Second, we found that these forms of new property are often more valuable than the tangible assets they have acquired. Third, we found that some (or all) of these career assets are excluded from the pool of property to be divided at divorce. Fourth, we found that the excluded assets are typically treated as the property of the husband, which means that he is allowed to keep a greater share of the marital property. The result is that marital property is not being divided equally upon divorce.

3. New rules for dividing marital property

These findings lead to the recommendation that the definition of marital property be expanded to include career assets such as those enumerated above, and that these assets be divided as part of the marital property upon divorce.

Many states are moving in this direction and Congress has set an example with recent legislation for pensions and medical insurance. For example, starting with Pat Schroeder's pioneering legislation in the Foreign Service Act of 1980, pensions of government employees (including Civil Service, military and foreign services officers) are more likely to be treated as marital property. In addition, The Retirement Equity Act of 1984 facilitates the distribution of private pension benefits after divorce by requiring private pension plans to comply with court orders in a divorce decree.

More recently, a spouse's entitlement to retain medical insurance has been protected by a provision of the 1986 Budget Reconciliation Act (which allows spouses and dependent children to continue to be covered under group health insurance programs for up to three years.)

These laws are a step in the right direction because they recognize a spouse's potential entitlement to share marital assets that she or he helped to build. Yet only the Foreign Service Act of 1980 guarantees spouses a pro-rated share of the worker's pension (after marriages of ten or more years). This provision, which is based on the principle of marriage as an equal economic partnership, should be extended to all career assets acquired during marriage. This would include pensions and retirement benefits, medical and hospital insurance, and social security credits earned during marriage.

B. Alimony: The Myth And The Reality

The second major factor that contributes to the financial hardships that women experience after divorce is alimony--or more precisely the absence of any alimony. Alimony is largely a myth: 85 percent of the divorced women in the United States are not awarded any alimony at all. (I use the term women because they are the overwhelming majority of dependent spouses eligible for alimony.)

In theory, the laws of most states promise to provide post-divorce support for three groups of dependent spouses: mothers with custody of young children, older homemakers incapable of self-sufficiency, and women who need transitional support. Despite the guarantee, however, new norms of self-sufficiency are in fact being applied to all of these women.

For example, under California's new alimony law, spousal support awards to mothers of preschool children dropped more than for any other group of women. (Only 13% of mothers with children under 6 are awarded any support.) Judges and lawyers report that they prefer to "encourage" all mothers of preschoolers to enter the labor force as soon as possible.

Similarly, older women who have been housewives and mothers throughout marriages of long duration are being held to the new law's standards of self-sufficiency. Although a higher percentage of these women are awarded spousal support, still one out of three gets nothing at all. In addition, even those who are awarded alimony often receive comparatively low awards and are admonished to try to get a job and become self-sufficient despite their obvious inability to do so.

Most of the judges we interviewed approached these cases mindful of the husband's need for "his income" and his limited capacity to support two families. But these judges are often unaware of the dismal employment prospects the older career-homemaker faces. Our interviews with older women tell of a bleak and depressing struggle:

> I've been turned down for hundreds of jobs ... it's been the most frustrating and degrading experience of my life.
>
> There is no way I can make up for twenty-five years out of the labor force.... No one wants to make me president of the company just because I was president of the PTA.
>
> An older woman is a pariah.... One employer told me I was too old to learn the job, another seemed to think I'd bankrupt his medical insurance plan....
>
> I could get a job as a "salesgirl" at Magnin's because I still look like the upper middle class woman I was, but it would be too humiliating.

Throughout the United States there has been a shift from permanent alimony awards, based on the premise of the wife's continued dependency, to time-limited transitional awards, based on the new assumption of self-sufficiency. (The median duration of these awards in California is twenty-five months, just about two years.) Thus the average award carries an expectation of a short transition to self-sufficiency.

The major impact of the no-fault's alimony reforms has fallen on middle-class and upper-middle-class women because they were the women who could (and did) count on alimony under the old law. In contrast to the old law's assumption that these women would remain dependent after divorce and were therefore in need of permanent alimony, the new laws have brought an expectation that they should become both independent and self-sufficient.

These women are increasingly being denied alimony altogether, especially if they have earned even minimal incomes in the past, or they are being awarded small amounts for short periods solely to "ease the transition." However, an award of $350 a month in 1984 dollars for a period of two years is not likely to be seen as a great boon to the newly divorced middle-class woman. Rather it conveys a message: find a job right away, any job, and start supporting yourself.

1. New guidelines for spousal support after divorce

These observations lead to additional policy recommendations. While many of these are oriented to state law, here too federal law is critical because the tax treatment of alimony sets the framework within which these awards are negotiated.

Different standards for alimony are appropriate for older homemakers and younger mothers.

With regard to older homemakers, the wholesale application of the new concepts of "equality"--and the expectation that all divorced spouses will be "equally" capable of supporting themselves after divorce is clearly inappropriate. It is also a violation of the deeper meaning of equality in marriage--that marriage is an equal partnership in which the contributions of the two spouses are of equal worth. If the husband's earning capacity is their major asset, and if it is treated as his alone at divorce, the essence of the equal partnership is violated.

My research reveals that a woman who is divorced after fifteen or twenty or thirty years of marriage can not recapture the years she has lost in the labor force. But an equally important lesson is this: she should not be expected to because she was promised by both her husband and the larger society that her husband would share his income with her. That was their marriage contract, both implied and expressed, and it is simply not fair to change the rules on her in the last quarter of the game, after she has fulfilled her share of the bargain.

The inequities visited upon older women could be reduced by support rules that aim at equalizing the standards of living of the two parties after divorce. Legislative directive could specify that women who married and lived under a different set of social and legal rules have earned the right to share their husbands' income for the rest of their lives and to maintain a standard of living that is equal to theirs.

Thus support awards following long marriages should be guided by three presumptions: a presumption that future earning capacity and the income it produces are assets of the marital partnership, a presumption that these assets should be shared by the two spouses after divorce, and a presumption that support awards should equalize the standards of living of the two parties after divorce.

A different set of support rules is required for younger women who have been housewives and mothers and have foregone, delayed or subordinated their own careers for their husbands and families. Here too, sharing principles and an effort to equalize the standards of living in the two households are essential in the early years after divorce, and for an extended period if there are minor children. But there is an additional goal for these women--the goal of helping them to maximize their earning capacities. Even if these women have been employed during marriage, it is likely that marriage has had a detrimental effect on their careers. What they need now are spousal support awards that allow them to take advantage of the benefits of counseling, education, and retraining, and enable them to fully invest in their careers. Since research shows that investments in their "human capital" in the early postdivorce years pays off in their long-term earning capacity (Weitzman, The Divorce Revolution, 1985: 208-209), their support awards should begin with several years of balloon payments to subsidize training or retraining so that they can maximize their long-term employment potential.

In both cases, the postdivorce support award should provide for cost-of-living increases so that their real values do not erode with each passing year. In addition, penalties and interest should be assessed on late payments.

C. Child Support Awards

Since I know that members of this committee are familiar with the nationwide problems of child support enforcement--and have been some of the most active members of Congress in trying to remedy this situation--I shall limit my discussion to the unique findings of my research.

1. The amount of child support

Child support awards in California are, like those in most states, simply inadequate: the average child support award is less than half of the costs of raising a child. In fact, it is less than the average cost of day care alone.

Ironically, custodial mothers have a greater need for support from their ex-husbands after divorce--just at the point where judges are telling them to make do with less. Most custodial mothers have to take over many of their husband's family responsibilities and face greater burdens and greater expenses as single parents.

Yet, it is very rare for any court to order more than 25% of a man's income in child support or more than 32% of a man's income in combined child support and alimony. Even though judges say that their typical award is closer to one-half of the husband's income, data from both court dockets and interviews reveal that the real proportion is quite different. Instead of a 50/50 division of the husband's income, the typical award is one-third for the wife and two children and two-thirds for the husband.

Higher income men are ordered to pay a lower percentage of their incomes so that among upper-income men the typical award is one-fifth for the wife and children and four fifths for the husband. Thus men who earn $50,000 or more a year retain an average of 81% of their net incomes for themselves (Weitzman, The Divorce Revolution, 1985: table 24, p. 267).

What do the current child support awards mean in standard of living terms? If they had to live on the child support the court ordered, 73% of the California men could live comfortably after making the payments, while only 7% of the women and children would be living at the same level--even if the support were paid in full. Almost all of the women and children- -fully 93%--would be living below the poverty level.

Some people have questioned whether men can afford to pay the amounts of child support ordered by the courts. Whether we calculate the percentage of the supporter's income or the standard of living he has after paying, we find that the vast majority of divorced fathers can pay child support and still maintain a relatively comfortable standard of living.

Significantly, both divorced men and divorced women agree with this conclusion. When asked, "Can you (or your ex-husband) afford to pay the child support the court ordered?", fully 80% of the women and 90% of the men say yes. Thus, both men and women see the award as reasonable in terms of the husband's ability to pay. Only a small minority felt the awards are excessive.

Along the same lines, when asked about their satisfaction with the amount of child support awarded in their case, the vast majority (91%) of divorced men see the awards as reasonable in terms of their income. Only 9% of the men say they were dissatisfied. (As might be expected, a larger percentage of the women, 36%, are dissatisfied with the amount of child support awarded and see it as inadequate.)

In summary, the data point to three conclusions. First, the amount of child support ordered is typically quite modest in terms of the father's ability to pay. Second, the amount of child support ordered is typically not enough to cover even half the cost of actually raising the children. Third, the major burden of child support is typically placed on the mother even though she normally has fewer resources and much less "ability to pay."

2. Support enforcement: surprising data on noncompliance

Even though child support awards are modest to begin with, they are often unpaid because many divorced fathers simply ignore court orders. (As you know, 1983 census data reveal that only half of the fathers fully comply with court orders to pay child support [U.S. Census, 1985].)

This is not because fathers cannot "afford" to pay. One of the most surprising findings of our California research was the extent of noncompliance among middle class and upper middle class men--the doctors and engineers and policemen and high school principals. Our data show that men who earn between $30,000 and $50,000 a year were just as likely to fail to pay child support as those who earn less than $10,000 a year (Weitzman, The Divorce Revolution, 1985: table 25, p. 296).

The result is that the mother, who typically has few resources to begin with, is left with the major burden of collecting the support her children are due. As one mother explained:

> "Each time I went to court I lost a day's pay, and I had to pay my lawyer for his court rate. We had to wait two hours for the case to be called, and the (my ex-husband) got a postponement to get his papers together. ... The next time he was sick... Then he changed attorneys... Each time the judge said he had a right to have his side represented... but I couldn't afford it anymore. They let him get away with murder."

Another surprising finding was the reluctance of California judges to order wage assignments, which were already well-known as the most effective in securing compliance.

At the time we did our research, California law required judges to order a wage assignment if the payor was two months in arrears. Yet at a time when almost half of the cases were in arrears, only 5% of the cases (with a court award) had a wage attachment.

Even more telling are the judges' responses to the question, "How many wage assignments have you ordered in the past six months?". The average was only one or two wage assignments per judge over the six-month period, and more than a quarter of the judges said they had never ordered a wage assignment. When one considers that there were about 36,000 divorce cases heard in Los Angeles County each year, and that the Los Angeles County judges (and commissioners) are a "specialized bench" assigned to hear only family law cases, it is evident that each judge heard hundreds of noncompliance complaints during this six-month period. Yet they ordered wage assignments in only a tiny fraction of the cases--less than one in a hundred.

If, as Dean Pound said, "the life of the law is in its enforcement" it is clear why the lack of enforcement of child support awards makes a mockery of the legal system. Precisely these sentiments were echoed over and over again by the women we interviewed:

> "It literally makes me sick... It is so contrary to everything I was taught about the law, the courts, and justice. I feel totally betrayed... He totally disregards the whole legal system."

A second judicial practice undermines the legal obligation to pay child support: many judges simply "excuse" arrearages (i.e. money owed for past-due child support). As one mother who spent 5 years tracking down her non-supporting husband complained:

> "The judge said he could pay off the arrearage (of $12,000) at the rate of $20.00 per month... with no interest or anything... It's outrageous--he gave him 50 years to pay me back! ... But I'm stuck paying interest on the money I borrowed to keep the kids alive."

The judges we interviewed explained this practice by saying they did not want to make payments too difficult ("It would be a financial hardship for a man to make back payments in full"); or that they wanted to give the father a break so that he can get on the right track; and trying to look to the future, not the past (after all some judges reasoned, "The children have managed to survive"). The implicit message in the judges' treatment of arrearages is that fathers are rewarded for noncompliance by having their debt reduced or forgiven. Once again the legal system gives fathers an incentive not to pay child support.

In the end, the current legal system places the economic responsibility for children on their mothers and allows fathers the "freedom" to choose not to support their children. The result is that children almost always experience a decline in their standard of living after divorce. The dislocation from friends, neighborhoods, and family that many of these children endure, and the bitterness and anger they may harbor against one parent or the other, often translate into a pervasively unhappy, distrustful, and pessimistic view of life. This has profound implications for the future of a society which expects more than half of its children to experience the dissolution of their parent's marital relationship before they reach the age of eighteen.

3. New rules for child support

Congress has already led the way to improve child support enforcement with the child support enforcement amendments in 1984. Provisions for automatic wage assignments, channeling support payments through administrative arms of the court, intercepting state and federal income tax refunds to secure past-due support from delinquent fathers; expanding location and tracking procedures through Social Security and the Internal Revenue Service; and securing payment through the posting of bonds and obtaining liens on property, should all make a major difference.

But there is still more to be done.

We still need realistic guidelines for child support awards that are based on the income sharing approach and the assumption that children are entitled to maintain the standard of living of the higher-income parent insofar as possible. Each parent should contribute to child support according to his or her ability to pay--with due consideration given to the caretaking contribution of the custodial parent. (The innovative guidelines established in Delaware, Minnesota, and Wisconsin provide potential models.)

A second necessity for child support awards is that they include provisions for automatic cost of living (COLA) adjustments, as do many private and government stipends (such as social security awards). Since the purchasing power of child support awards is eroded in an inflationary economy, awards must be linked to the consumer price index or to some other basic economic indicator that will allow for automatic adjustments that maintain a steady standard of living. In addition, penalties and interest should be assessed on late payments.

4. The special problem of dependent children over 18

In many states children over age eighteen are treated as adults (even if they are still high school students), and their parents are not legally obligated to contribute to their support. The *de facto* result of this rule is that mothers' more limited resources are further strained. The policy recommendation in this sphere is to require parents to support children until they complete their college education. Parental contributions for such support could be apportioned according to the parents' relative incomes, just as it is for minor children.

Federal law could set the age of majority for child support at age 21. This could also be done, although less efficiently, with state legislation. Precidents already exist in New York (where there is a presumption that child support lasts until the child reaches age 21 unless the child becomes emancipated), and in the State of Washington (which permits divorce courts to order parents to support their college age children past majority--until they complete their undergraduate education if they are full-time students).

III. WHAT CAN BE DONE?

As you can see, I have already begun answering my third question, what can we do to eliminate some of the hardships of divorce?

Although there is considerable need for legal reforms on the state level, I would urge you to view the problems that divorce creates as national problems. Many of these problems require nationwide solutions and can not be solved most effectively by piecemeal legislation on the state level.

Since I have suggested a broad range of policy alternatives in the midst of my testimony, I will not burden you by repeating them here. But I do wish to underscore four spheres where congressional action would be most appropriate--would have the greatest impact.

At the heart of my suggestions is a simple principle -- the promulgation of rules that treat marriage and the assets acquired during marriage as an equal economic partnership.

1. Pro-rated sharing of pension benefits acquired during marriage.

Today many federal pensions (such as Civil Service pensions) and most private pensions are subject to state laws which may not recognize a spouse's interest in pension benefits acquired during marriage. Just as federal law establishes vesting requirements for all pensions, it should also require pro-rating of pension benefits that have been acquired during marriage. This is especially important in the event of a divorce.

Principles for pro-rating pension benefits at divorce have already been established by the Foreign Service Act of 1980. (That Act guarantees spouses a pro-rated share of the worker's pension after marriages of ten or more years and requires an equal division of the pension after long marriages.)

2. Sharing social security credits earned during marriage

Social security credits earned during marriage are not treated as "marital property" because they are credited only to the wage earner spouse. This system deprives the homemaker spouse and the lower wage earning spouse of her or his share of these valuable assets.

Since social security credits earned during marriage are the product of the marital partnership, just as are pension and retirement benefits, social security credits should be treated as marital property and shared by the two spouses.

An excellent proposal to reform the social security system, suggested by Representative Mary Rose Oaker, would divide the credits earned by the spouses during each year of the marriage. This would facilitate a more equal sharing of the marital assets both during marriage and in the event of a divorce.

3. Tax incentives for short-term alimony

Federal law does not allow income tax deductions for short-term or lump-sum alimony. It therefore discourages alimony awards to homemaker spouses who have foregone, delayed or subordinated their careers during marriage. Many of these women need a few years of postdivorce support to acquire education, counseling and training to build their earning capacities and become self-sufficient.

Since research has demonstrated the need for and effectiveness of short-term spousal support for homemaker spouses, such awards should be encouraged by treating them like long-term alimony awards (and making them tax-deductible to the payor). This would facilitate post-divorce income sharing and encourage investments in the human capital and earning potential of the homemaker spouse.

4. Support for dependent children over 18

Many children of divorce suffer from state laws that treat dependent children over 18 as adults and do not allow courts to award them child support. Since many of these "children" are full-time students in high school and college, they are severely disadvantaged by the absence of "normal" parental support. Our date show that few fathers voluntarily contribute to their support. While more mothers do, their contributions are severly constrained by their low incomes and lack of financial resources.

Federal law could facilitate the education and support of these children by setting the legal age of majority at 21 for the purposes of child support. Parental contributions of fathers and mothers would then be apportioned according to their means.

In summary, I am urging a focus on federal rules and programs that treat marriage as an equal partnership--not just at divorce but during marriage as well. This would go a long way to help transform the *cumulative disadvantages* that women and children now experience after divorce into a set of *cumulative opportunities*--and would restore fairness and equity to the present system of divorce.

Chairman MILLER. Thank you. Severa Austin.

STATEMENT OF SEVERA AUSTIN, DIRECTOR, BUREAU OF HUMAN RESOURCES, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, MADISON, WI

Ms. AUSTIN. Thank you, Mr. Chairman, members of the committee. I am Severa Austin from the Bureau of Human Resources. I have been asked in general to talk about the economic impact of divorce on women and children, but more specifically to provide information on the child support initiative which is a major reform effort currently underway. I think it reflects much of what you heard today in terms of a State trying to solve some of the problems that have been identified.

As I know you are aware, the incidents of poverty among children in the United States has increased dramatically in the last 10 years. Most of this poverty exists for female-headed families. Nationally, over half of the households headed by single mothers are below the Federal poverty line. In Wisconsin in 1983, 169,519 children lived in a female-headed household, 102,946 of these were AFDC recipients. Eighty-two percent of our 84,000 female-headed families were divorced, separated, or widowed. The majority of that is divorced.

We estimate that 45 percent of all family's experience with poverty is a result of marital breakup, and half of all periods of AFDC recipiency start when a wife becomes the head of the household. While three-fourths of female-headed households with children are employed, one-fourth of them never escape poverty despite income from these jobs. In Wisconsin, the median income of a married couple is $22,132; for a female-headed household with children under 6, it is $5,949. National estimates are that there are 8.3 million women in the United States where there is an absent father who at least theoretically has a child support obligation. Those families have about $86.8 billion in cash income; $63.4 billion of that is earned income by these women, and only $7.4 billion is income from child support.

A recent study estimates that $26.5 billion could be collected in child support in this country which is 3½ times the amount actually collected. That is based on the ability to pay of the noncustodial parent. We also know that 67 percent of all child support obligors become delinquent in their payments within 3 years of the child support order. Thus, the economic impact of divorce on women and children is too frequently one of greatly reduced income potential or actual poverty, and a need to rely on public benefit programs.

The growing number of families in poverty and the need for reliance on our public benefits system was of major concern to lawmakers and public policy officials in Wisconsin in the late 1970's. A Welfare Reform Commission was established in 1978 to examine the present system and make recommendations for improvements. One of the results of this study was the conclusion, and it should not have been surprising, that part of the welfare/poverty problem was the nonsupport of children by the noncustodial parent. Based on this finding, the Commission recommended that the child support system in Wisconsin be reformed and that it should do three things:

One was that automatic payroll deductions be used for payment of child support by the noncustodial parent; second, the development of standards which can easily be used to determine the appropriate child support award amount; and, third, the development of a minimum benefit for all children who did not reside with both biological parents.

These recommendations were based on the following findings: No. 1, the current system impoverishes children and single mothers. Only a minority of children eligible for support receive it, and even those who do get payment, few receive the full amount in a timely manner. It is estimated that 57 percent of all Wisconsin children eligible for support awards receive no financial support. Of those who have court orders for support, 25 percent receive nothing. Nationally, single parent families are recognized to be a greater risk of living in poverty. Based on information from the 1980 census date, 46 percent of households living in poverty have an absent father.

Second, the system is inequitable. Support awards very substantially and bear little relationship to the needs of the child or the income and assets of the noncustodial parent. There are also disparities in amounts that are set for parents with similar incomes and the same number of children.

Third, it promotes parental irresponsibility. If the noncustodial parent does not pay child support, then the burden of financial support is shifted to the public sector. Thus, since AFDC has become a divorce subsidy and is used as a substitute for parental support, they are often forced to seek assistance from our welfare system.

Fourth, the system promotes bad feelings between ex-spouses. I think we have heard a lot about that today. It creates adversarial relationships between parents who must continue to try to coparent after divorce. Research on the effects of divorce on children has found that it is not the divorce per se that causes problems for the children, but rather continuing conflict between the parents and the lack of contact with the noncustodial parent.

Last, the system is inadequate for establishing the enforcing support orders due to crowded court calendars, delays in continued support to the family and large caseloads.

In Wisconsin the divorce rate has tripled in the last 15 years. In 1982 there were 17,000 divorces. Sixty-two percent of these included families with children. In 1980, there were 276,000 Wisconsin children eligible for a child support award. Based on all of that, our legislature and our department developed a reform initiative to deal with the problems that have been outlined. The goals of that were to, No. 1, affirm the responsibility the parents have to provide adequate support to their children. We call it "not divorcing your children even though you divorce your spouse." To guarantee that the system for establishing, enforcing, and distributing child support obligations are equitable and efficient; third, to assure to the extent possible that children receive the parental support tc which they are entitled, and lastly to reduce the number of families who must rely on AFDC.

In 1983, the Wisconsin legislature directed my department to do two things: One, to implement 10 pilot programs to test the automatic withholding of child support payments; and, second, to develop a percentage of income standard to be used as a method of setting support awards. In 1985, the legislature made payroll withholding mandatory in all of our counties by July 1, 1987, and directed the courts to use the percentage standard as the preferred method of setting awards.

Those percentages are 17 percent for one child, 25 percent for two, 29 for three, 31 for four children, and 35 percent for five or more children. We believe the standard more equitably distributes the financial responsibility between parents, reflects the noncustodial parent's ability to pay and is administratively a simple way to determine child support awards. The long-term goal of the initiative is to develop a Child Support Assurance Program as an alternative to AFDC in a State which would be a guaranteed payment to children not receiving adequate support from noncustodial parents.

The system will eliminate the work and disincentives in the current Federal regulations for AFDC and reduce the stigma associated with welfare. We will be piloting this program in 1987.

I want to thank you for the opportunity to testify. You have chosen a very difficult subject, but I see nothing in current trends and certainly in the testimony today that indicates this is going to go away. I'd be happy to answer any questions later.

[Prepared statement of Severa Austin follows:]

Prepared Statement of Severa Austin, Director, Bureau of Human Resources, Department of Health and Social Services, Madison, WI

I would like to thank the Members of the Select Committee on Children and Families for the invitation to testify today. I have been asked to discuss the economic impact of divorce on women and children, and to provide information on our Child Support Initiative which is a major reform effort currently underway in Wisconsin.

I know you are aware the incidence of poverty among children in the U.S. has increased dramatically in the last 10 years. Most of this poverty exists for female-headed families. Nationally, over half of the households headed by single mothers are below the Federal poverty line. In Wisconsin in 1983, 169,519 children lived in a female-headed household, 102,946 of these were AFDC recipients. Eighty-two percent of our 84,000 female-headed families were divorced, separated, or widowed. We estimate that 45 percent of family's experence with poverty is a result of marital breakup, and half of all periods of AFDC recipiency start when a wife becomes the head of the household. While three-fourths of female-headed households with children are employed, one-fourth of these never escape poverty despite income from these jobs. In Wisconsin, the median income of a married couple is $22,132; for a female-headed household with children under 6, it is $5,949. National estimates are that there are 8.3 million women in the U.S. where there is an absent father who at least theoretically has a child support obligation. Those families have about $86.8 billion in cash income; $63.4 billion of that is earned income by these women, and only $7.4 billion is income from child support. A recent study estimates that $26.5 billion could be collected in child support, which is 3½ times the amount actually collected in this country. We also know that 67 percent of all child support obligors become delinquent in their payments within 3 years of the child support order. Thus, the economic impact of divorce on women and children is too frequently one of greatly reduced income, potential or actual poverty, and a need to rely on public benefit programs.

WISCONSIN CHILD SUPPORT REFORM INITIATIVE

The growing number of families in poverty and the need for reliance on our public benefits system was of major concern to lawnmakers and public policy officials in Wisconsin in the late 1970s. A Welfare Reform Commission was established in 1978 to examine the present system and make recommendations for improvements. One of the results of this study was the conclusion that part of the welfare/poverty problem was the non-support of children by the non-custodial parent. Based on this finding, the Commission recommended that the child support system be reformed. The specific recommendations included:

1. Automatic payroll deductions be used for payment of child support by the non-custodial parent;
2. The development of standards which can be easily used to determine the appropriate child support award amount; and
3. The development of a minimum benefit for all children who did not reside with both biological parents.

These recommendations were based on the following findings:

1. *The current system impoverishes children and single mothers* (90 percent of all custody arrangements after divorce is mother custody). Only a minority of children eligible for support receive it and even those who do get payment, few receive the full amount in a timely manner. This non-payment of child support pervades all segments of society. It is estimated that 57 percent of all Wisconsin children eligible for support awards receive no financial support. Of those who have court orders for support, 25 percent receive nothing. Nationally, single parent families are recognized to be a greater risk of living in poverty. Based on information from the 1980 census date, 46 percent of households living in poverty have an absent (noncustodial) father.
2. *The system is inequitable.* Support awards vary substantially and bear little relationship to the needs of the child or the income and assets of the non-custodial parent (the parent's true ability to contribute to the support of the children). There are also disparities in amounts that are set for parents with similar incomes and the same number of children.
3. *Promotion of parent irresponsibility.* If the non-custodial parent does not pay child support, then the burden of financial support is shifted to the public sector. Thus, since AFDC has become a divorce subsidy and is used as a substitute for parent support, they are often forced to seek assistance from our welfare system.
4. *The system promotes bad feelings between ex-spouses,* as it forces one parent to "sue" the other for support. It creates an adversarial relationship between the parents who must continue to co-parent after divorce. This is detrimental to the child. Research on the effects of divorce on children has found that it is not the divorce per se that causes problems for the children, but rather continuing conflict between the parents and the lack of contact with the non-custodial parent.
5. *The system is inadequate for establishing the enforcing support orders,* due to crowded court calendars, delays in continued support to the family once a delinquency occurs, large caseloads. Additionally, the system is too expensive.
6. Given the divorce and separation are rapidly increasing, we cannot ignore our responsibility to the minor children in these families. The divorce rate in Wisconsin has almost tripled in the last 15 years. In 1982, there were 17,000 divorces in Wisconsin; 62 percent of those divorces included families with minor children. In 1980, there were 276,000 Wisconsin children, eligible for a child support award. Nationally it is estimated that by 1990, one out of every two children will spend some time in a single parent home before they are 18.

The goals of our reform initiative are: (1) to affirm the responsibility that parents have to provide adequate support to their children; (2) to guarantee that the system for establishing, enforcing, and distributing child support obligations are equitable and efficient; (3) to assure to the extent possible that children receive the parental financial support to which they are entitled; (4) to reduce the number of single parent families who must rely upon AFDC for support of the children.

In 1983, the Wisconsin Legislature directed the Department to do two things: (1) implement 10 pilot projects to test the *automatic* withholding of child support payments, and (2) to develop a percentage of income standard to be used as a method of setting child support awards. In 1985, the legislature made payroll withholding mandatory in all counties by July 1, 1987, and directed the courts to use the percentage standard as the preferred method of setting awards. Those percentages are: 17 percent for 1 child, 25 percent for 2 children, 29 percent for 3 children, 31 percent for 4, and 35 percent for 5 or more children. We believe the standard more equitably distributes the financial responsibility between parents, reflects the non-custodial parent's ability to pay, and is an administratively simple way to determine award amounts. The long-term goal of the Initiative is to develop a Child Support Assurance program as an alternative to AFDC, which would be a guaranteed payment to children not receiving adequate support from non-custodial parents. The system would eliminate the work disincentives in the current Federal regulations for the AFDC program and hopefully reduce the stigma associated with "welfare." We will be piloting this program in 1987.

Thank you for the opportunity to testify on this important topic. You have chosen a very difficult but extremely important policy area for consideration by this committee, as nothing in current trends indicate any reduction in the emotional and financial impact on families of divorce. I'd be glad to answer any questions the members may have.

Chairman **Miller**. Thank you. Mr. Hoffman.

STATEMENT OF SAUL HOFFMAN, ASSOCIATE PROFESSOR OF ECONOMICS, UNIVERSITY OF DELAWARE, NEWARK, DE

Mr. **Hoffman**. Thank you. I am Saul Hoffman from the Department of Economics at the University of Delaware. I want to report today on the impact of divorce on the economic well-being of children. I suspect that it will surprise few of you to learn that children are adversely and often severely affected; indeed the result could hardly be otherwise, given what we already know about how women are affected financially by divorce.

The findings I will report are based on research done jointly with Greg Duncan with the University of Michigan. Our work is unique in that it provides a rare before and after glimpse of the economic status of all the participants in a divorce and thus provides direct information on how divorce altered economic well-being. The information is based on a representative national sample, the Panel Study of Income Dynamics, and can be taken as typical of the experience of men, women and children in families undergoing a divorce or separation during the past 10–15 years.

To measure the economic impact of divorce, we compare the standard of living of a family in the year before a divorce occurs to its standard of living in the years following that divorce. Standard of living here means total family income, including any income from welfare, alimony, or child support, relative to the needs of the family. The needs are the official poverty standard for a family of that size. Where income is less than needs, the family is officially classified as living in poverty because divorce inevitably leads to a reduction in family size and hence in the needs of the new family, a family's standard of living falls by a bit less than its income. Thus, this figure is both more accurate and more conservative than changes in income alone.

Let's begin, then, by considering the economic well-being of children in the year preceding the breakup of a marriage. On average, family income substantially exceeds needs by about a factor of 3 for white children and a factor of 2 for black children, which means they are consuming at a level 3 and 2 times the poverty level, respectively. There are, of course, some families and some children who are in distress. About one-eighth of them have incomes low enough that they are officially classified as poor, and nearly a quarter of the black children live in such families.

How does the breakup of the marriage change this situation? Well, it worsens it. It worsens it substantially. In the year following the divorce, the average standard of living of children is about 30 percent lower than in the year before divorce. Although the proportionate drop is roughly similar for both white and black children, black children are starting from a lower level and the average black child in a postdivorce household now has a standard of living only about 30 percent above the poverty level. The average white child in a postdivorce household has a standard of living about twice the poverty level, which is actually about the same standard of living of a black child in a two-parent family.

That 30 percent decline reflects some quite substantial efforts by many divorced women to provide income for their families. For example, there is a very substantial increase in their labor market activity. In the year before divorce, we found that roughly half of the women were working about a 1,000 hours or more in a year. The year after the divorce, three-quarters of them are—a very sharp increase. Obviously in the absence of such actions, the economic impact of divorce would be significantly larger.

That 30 percent decline that I reported also represents the net effect of all alimony and child support payments that are actually received; and that the standard of living should fall for children and women and rise, as it in fact does, for men, even after accounting for their alimony or child support obligations, certainly says something about the adequacy and burden of those payments.

Although the average decline in living standards is 30 percent, for many children the situation is much more serious. Nearly a quarter of all children and a third of all black children find that their standard of living is less than half of what it had been in the year before divorce. Poverty rates double; where about one child in eight was officially poor even when his or her parents were married, now one child out of four is in that predicament. For black children, the program is nearly 409.

Of course, not all children fare so poorly as a consequence of divorce. Sometimes a divorce coincides with a favorable labor market event, a job promotion, or a substantial salary increase and sometimes alimony and child support payments are adequate so that a child's standard of living actually improves in the years after divorce. In fact, we found that about one-fifth of the children were in that situation. It is, of course, not the divorce which is the cause of the improvement, but it is something to keep in mind at the same time.

The statistics that I have been discussing actually refer to the first year after a divorce occurs, and one might hope to find evidence that things improve with the passage of time as women find better jobs, become full-time workers and so on. In fact, we found very little evidence of that at all. Indeed, the only thing that makes a dramatic impact on the postdivorce economic well-being of children is remarriage.

The last thing I want to talk about is alimony and child support and welfare. I cannot provide any information on court awards of alimony or child support, so I cannot tell you how much improvement would occur if those awards were faithfully carried out. What I can tell you is the extent to which payments are being received.

We found that about 40 percent of all women, representing about 50 percent of all children, received as much as $250 a year in alimony or child support payments. Sixty percent of all women, 50 percent of all children are receiving nothing or less than $250. Moreover, as other evidence confirms, such payments are more likely the higher the predivorce family income, and they are received quite infrequently by black women and black children. We found that white women were nearly two and a half times as likely to receive income from alimony or child support as black women.

Finally, divorce is one of the main routes by which women and children enter the welfare system. A recent work by Mary Jo Bane and David Ellwood has shown that divorce accounts for 45 percent of the beginnings of a period of welfare receipt. Another 30 percent are due to the birth of a child of an unmarried woman, so the relative importance of these family composition changes should be clear.

There is a great deal of speculation about whether the availability of welfare income is itself a precipitating factor in those events, but those are hypothesis which I think at this time must be considered as possible, but unproved. In our work, we find that one child out of three in post-divorce years is living in a household receiving welfare income, and for black children and white children from families with below median family income, that percentage is nearly 50 percent. And on that somber note, I will conclude my testimony.

[Prepared statement of Saul Hoffman follows:]

Prepared Statement of Saul D. Hoffman, Department of Economics, University of Delaware, Newark, DE

THE EFFECT OF DIVORCE ON THE ECONOMIC WELL-BEING OF CHILDREN

(Testimony presented before the Select Committee on Children, Youth, and Families, June 19, 1986)

I want to report today on the impact of divorce on the economic well-being of children. It will probably come as no surprise that children are adversely and often severely affected—indeed, the result could hardly be otherwise given what we already know about how women are affected financially by divorce.

The findings I will report are based on research done jointly with Greg J. Duncan of the Institute for Social Research. Our work is unique in that it provides a rare before and after glimpse of the economic status of all the participants in a divorce and thus provides direct information on how divorce altered economic well-being. The information is based on a representative national sample (The Panel Study of Income Dynamics) and can be taken as typical of the experience of men, women, and children in families undergoing a divorce or separation during the past 10–15 years.

To measure the economic impact of divorce, we compare the standard of living of a family in the year before a divorce occurs to its standard of living in the years following that divorce. Standard of living here means total family income (including any income from welfare, alimony, or child support) relative to the needs of the family; the needs are the official poverty standard for a family of that size. Where income is less than needs, the family is officially poor. Because divorce inevitably leads to a reduction in family size and hence in the needs of the new family, a family's standard of living falls by a bit less than its income. Thus, this figure is both more accurate and more conservative than changes in income alone.

Let's begin, then, by considering the economic well-being of children in the year preceding the break-up of a marriage. On average, family income substantially exceeds needs—by about a factor of 3 for white children and a factor of 2 for black children which means they are consuming at a level 3 and 2 times the poverty level, respectively. There are, of course, some families and some children who are in distress—about one-ninth (12 percent) of them have incomes low enough that they would be officially classified as poor. And nearly a quarter of the black children live in such families.

How does the break-up of the marriage change this picture? It worsens it—substantially. In the year following the divorce, the average standard of living is about 30% lower than in the year before divorce. Although the proportionate drop is similar for both white and black children, the fall in living standards means the the average black child in a post-divorce household now has a standard of living only

30% above the poverty level. The average white child in a post-divorce household has a standard of living about twice the poverty level.

That 30% figure reflects some quite substantial efforts by many divorced women to provide income for their families. For example, there is a substantial increase in their labor market activity. In the year before divorce, roughly half of the women were working 1000 hours or more a year; the year after the divorce, almost three-quarters are. In the absence of such actions, the economic impact of divorce would be significantly larger. That 30% decline also represents the net effect of all alimony and child support payments actually received; that the standard of living should fall for children (and women) and rise as it, in fact, does for men (even after accounting for their alimony and child support obligations), certainly says something about the inadequacy and burden of those payments.

Although the average decline in living standards is 30%, for many children, the situation is substantially different. Nearly a quarter of all children and about a third of black children find that their standard of living is less than half of what it had been in the year before divorce. And poverty rates more than double. Where about one child in eight was officially poor even when his or her parents were married, now one child out of four is in that predicament.

Of course, not all children fare so poorly as a consequence of divorce. Sometimes a divorce coincides with a job promotion or a substantial salary increase for the mother, and sometimes alimony and child support payments are adequate or even more than that, so that a child's standard of living actually improves in the years after divorce. In fact, we find that about one-fifth of the children experience such an increase, although it is not, of course, the divorce which is the source of that improvement. This improvement tends to be more common for black women and for low income white women, presumably because their husbands earned less and thus the loss of income is more easily compensated for by favorable labor market events.

The statistics that I have been discussing actually refer to the first year after a divorce occurs and one might hope to find that things improve with the passage of time as the women find better jobs, become full-time workers and so on. In fact, we found little evidence of that: indeed, the only thing that made a dramatic impact on the economic well-being of the children involved in a divorce was remarriage.

The last issue I want to talk about is alimony and child support and welfare. I cannot provide any information on court awards of alimony or child support, so I cannot tell you how much improvement would occur if those awards were faithfully carried out. What I can tell you is the extent to which such payments are being received. We found that about 40% of all women (about 50% of all children) received as much as $250 a year in alimony or child support payments; moreover, as other evidence confirms, such payments are more likely the higher the pre-divorce family income. They are also received quite infrequently by black women: we found that white women were nearly 2½ times as likely to receive income from alimony or child support as black women.

Finally, divorce is one of the main routes by which women and children enter the welfare system. Work by Mary Jo Bane and David Ellwood has shown that divorce accounts for 45% of all beginnings of a period of welfare receipt; another 30% are due to the birth of a child to an unmarried woman, so the relative importance of these family composition changes should be clear. (It is possible that the availability of welfare income is itself a precipitating factor in divorce or illegitimacy, but, as yet, these are hypotheses which must be considered as plausible, but unproven). We find that one child out of three in the post-divorce years is living in a household receiving at least $250 annually in welfare income. For black children and white children from families with below median family income, the percentage is nearly 50%.

Chairman **Miller**. Mr. Keeton.

STATEMENT OF H. DALE KEETON, PRESIDENT, THE FAMILY INSTITUTE, LTD., THE VIENNA FAMILY THERAPY CENTER, VIENNA, VA

Mr. **Keeton**. Thank you, Mr. Chairman. My name is Dale Keeton. I am the director of the Vienna Family Therapy Center, which is multistaffed mental health center in northern Virginia focusing primarily in the area of family therapy. I would like to deviate from my written testimony to summarize, perhaps, some points that have been made and some that have not been made in both panel 1 and 2.

It seems to me that it is impossible to talk about divorce without talking about marriage, and I have come to understand through study in family systems theory, as well as Gestalt psychology, that it is important to remember that relationships have personalities all their own. That is particularly true in marriage and family. I think of every marriage as having three personalities: There is the husband, there is the wife, and then there is the relationship. That relationship personality grows and develops to the extent that it is adequately nurtured and fed.

The primary system of communicating that nurturing comes through various relationship skills, particularly in the area of communication. Not unlike a child that might be born into that union, then that relationship develops through various stages. As children come into the family, then they are influenced by the function or the relative disfunction of that relationship personality. That becomes, then, that personality of the marriage and family, the primary source through which children are able to grow and develop psychologically, spiritually and physically and experience wholeness.

Divorce, then, is the process by which the function of the marriage ceases—the relationship personality ceases to function appropriately and adequately. Now, there are some assumptions that I think even during the testimonies of this hearing that have been made, that a divorce is a divorce is a divorce, much like we might assume a marriage is a marriage is a marriage. There are different kinds of marriages, and they are different kinds of divorces.

Functionally, I think of some categories of marriages that I often refer to. One is "galluping hostile" in which there is conflict almost consistently and children grow up in that environment experiencing the kind of hostility and conflict that does not add to their positive development, but then there are other relationship personalities, marriage personalities, superficial where the marriage partners assume roles, but there is little substance within the relationship personality; the anemic marriage in which perhaps there is not enough energy between the two marriage partners to support their own emotional needs much less those of the children.

Then there is there is the opportunity that we all have as marriage partners to experience vital and energized marital relationship systems in which we can get our own needs met, as well as provide the needs for children. Just as we can describe different marriage personalities, I think that it is also possible to think of different kinds of divorces. So children will respond to divorce depended upon the variables, several variables that influence the process.

Some of the researchers, including Dr. Wallerstein, who had spoken previously on panel 1, have suggested that there are six variables which determine a child's relative adjustment to divorce: one, the quality of the nurturing relationship between the children and the custodial parent; two, the quality of the relationship between the ex-spouses; three, the psychological adjustment of the parents, especially the custodial parent; four, a reliable relationship with a noncustodial parent; five, financial resources; and the sixth variable, achievement by the children of a perceived and actual source of control concerning the divorce situation.

So it seems to me that when we consider the impact that divorce has upon children, we have to consider the nature of the marriage personality, as well as the kind of divorce that is being experienced. In my written testimony I cite an example of a young man who experienced what I call sudden divorce. The relationship between his parents would fall into that superficial stage. However, the children had adjusted to that particular style of family relationship, and on one evening the father announced that he was leaving. The child and the father had had a close relationship, and at this point, totally unprepared, the child reacted, of course, with a great amount of distress, withdrew and had little communication with mother or father because his way of coping was, perhaps, to internalize all of his anger, his fears, his confusion. So through the development of his later childhood years and his adolescents, this child changed considerably from an outgoing, energetic young man to a withdrawn, sullen, and depressive young man.

Now at age 20 he is in therapy with me dealing with those factors of his own experiences that were not dealt with, perhaps, appropriately during a stage in which he needed to deal with them. The father did not deal with them. Now, we have brought them both together, and they are trying to build a relationship again as young adult and father. Unfortunately, this young man lost many opportunities of his adolescents and teenage years as a result of this sudden experience of divorce.

Well, it seems to me that teenagers, perhaps, will not be able—capable, perhaps, as well as unwilling to share with their peers or with others in casual conversations their own difficulties, because after all, we don't like to be different. But it comes at a time, perhaps, after teenage years when young adults are having to deal with the impact of divorce and their families. We are learning now that adult children of alcoholics are understanding some of their own developmental experiences.

Perhaps we are also beginning to learn that adult children of divorce have to deal with some of the negative experiences that they did not understand and could not understand and perhaps were unable to cope with during childhood or adolescence. The question then remains: where should our emphasis be?

Of course, we need to emphasize the various programs of helping children and divorced parents deal with the difficulties of their life situations. But it seems to me that we still need to give prior emphasis to the possibilities of turning the tide of the situations. These children are at risk regardless of their coping mechanisms and the supporting help that they have. It is a risky situation for a child to experience a divorce between his parents.

I believe that it is possible for us to change the current, perhaps to have some impact and influence on the rate of divorce. That rate continues to rise, but one factor that has not been considered is that we have never had a national consciousness raising, an emphasis on how to build the strengths within families. I would hope that this committee would continue to give attention not just to remediation, but how can we influence society, how can we develop programs to help parents who have made an assumption, perhaps, as a result of society's presupposition that because we are biologically capable of producing children, we really do know how to help them develop. Because we are of legal age to get married, we really do understand how to develop a strong relationship system.

We need help with that, and I hope we can give prior emphasis to building marital and family strengths. Thank you, Mr. Chairman, for a chance to share with this committee.

[Prepared statement of Dale Keeton follows:]

PREPARED STATEMENT OF H. DALE KEETON, ED.D., PRESIDENT, THE FAMILY INSTITUTE, LTD., THE VIENNA FAMILY THERAPY CENTER, VIENNA, VA

The death of a marriage is a difficult experience to overcome. We have learned enough from family systems theory and other research over the past twenty years to understand that decisions to sever the bonds of an established relationship such as marriage impact on many people. Spouses, children, extended family, friends, even society itself are affected in predictable as well as surprising ways. None of us escapes the impact of a dissolved marriage of those we know and love. We can truly identify with John Donne's explanation of the death knoll:

> Ask not for whom the bell tolls--
> It tolls for thee.

If this sounds melodramatic, may I remind us all that a relationship has a life of its own. In fact, we could say that every marriage has three personalities: the wife, the husband, and the relationship. The personality of the relationship grows and develops to the extent that it is adequately nurtured and fed.

In other words, usually by the time children are born into the marriage, the "shape" or characteristics of the marriage personality are identified. This relationship system has a life all its own, influenced by the personalities of the husband and wife, but still a separate entity to be considered.

The relationship system becomes the primary source of growth for children as they move through the various stages of development. Indeed, God's design for families is such that this predictable source of emotional, physical, and spiritual nurturance compliment the child's need for the very qualities this system is capable of providing.

Divorce is the process by which the function of this system is interrupted and cannot do its work. Regardless of the level of functioning in the family, negative effects of the divorce are always experienced to some degree. This is particularly true of children who are innocently caught up in this drama and often feel as if they are the principle characters.

Researchers indicate that there are six variables which determine a child's relative adjustment to a divorce:[1,2,3]

1. the quality of the nurturing relationship between the children and the custodial parent;

2. the quality of the relationship between the ex-spouses;

3. the psychological adjustment of the parents, especially the custodial parent;

4. a reliable relationship with the noncustodial parent;

5. financial resources;

6. achievement by the children of a perceived and actual source of control concerning the divorce situation.

I would like to suggest that there is yet another variable to consider, and that is the *kind* of divorce that is being experienced. The notion that "a divorce is a divorce is a divorce" is being challenged by researchers and family

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[1] Hetherington, E.M., Cox, M., and Cox, R. "Divorced Fathers." *The Family Coordinator*, 1976, 25, 417-428.

[2] Longfellow, C. "Divorce in Context: Its Impact on Children." In G. Levinger and O.C. Moles (Eds.), *Divorce and Separation: Context, Causes and Consequences*, New York: Basic Books, 1979.

[3] Wallerstein, J. and Kelly, J. *Surviving the Breakup: How Children and Parents Cope with Divorce.* New York, Basic Books, 1980.

practitioners. We, at least, understand that some kinds of divorces are more destructive than others.

Of particular interest to me is the category often referred to as "sudden divorce." Like sudden death, in contrast to a lingering, terminal illness, the grief and adjustment processes are quite different. Sudden divorce often creates such catastrophic stress that it has a severe and long-term effect on the children who have had no advance warning. The healing from such events may take years or a major part of a lifetime for some of these victims.

Eric is a current client of mine whose parents were divorced when he was nine. He was an outgoing, energetic child who was particularly close to his father. Without warning, Eric heard his father announce one evening that he was leaving. Eric spent the night crying quietly in his room. The father intended to talk with his son later, but there never seemed to be that perfect opportunity. The relationship between father and son became superficial because of the "unfinished" business between them. Eric felt abandoned by his father, and father felt rejected by Eric. Visits became less frequent after father remarried and adopted another family.

Eric's personality changed in response to this sudden divorce. Teachers and scout leaders observed the difference. He became sullen and withdrawn, displaying little emotion. His interests were limited, and his mother could find nothing that seemed to stimulate him. Assuming he would "grow out of it," no help was sought for the child, but he continued his pilgrimage through junior and senior high school with minimal involvement and interest. While he did not act out his rage in violent ways, he internalized his feelings of abandonment where they destroyed his spirit.

Now, at age twenty, Eric is beginning to deal with the destruction of a sudden divorce. He and father are coming to terms with their mutual feelings of abandonment and rejection and are working at building a new relatinship. But Eric can never recapture the last opportunities of his teenage years.

Recommendation

Many good suggestions have come from this panel, all of which merit consideration. To those, I would like to add one other in the area of prevention.

Over 15 years of experience as a marriage and family therapist have often placed me in the position of presiding over the death of a marriage. I believe that many of these divorces could have been prevented if the partners had better preparation for marriage and continued training in relationship skill development during the various stages of the marriage life cycle.

I would suggest that this committee apply its influence toward a national program of building family strengths. By raising the awareness of well-intentioned marriage partners who desire strong and healthy relationship systems, I believe that we can change the pattern of relationship deterioration that all too often leads to unnecessary divorce.

Like the trend in medicine, prevention is the key. Building strong marriages and families is the responsibility of the individuals involved. But, it is our responsibility to provide them with the necessary tools.

Thank you very much.

H. Dale Keeton, Ed.D., president
The Family Institute, Ltd.
The Vienna Family Therapy Center
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Chairman **Miller**. Thank you.

Dr. Weitzman, and the panel, in terms of the divorced spouse, regarding a woman's ability to try to recover economically, what is happening right after that marriage? What kind of employment are we talking about? We had earlier testimony about many women who are caught without educational attainment or job skills. What labor sector are they entering? Can you comment also on the Wisconsin experience because, obviously, they weren't finding sufficient income to keep them off AFDC or other programs. We've learned the same about inadequate child support payments.

Dr. **Weitzman**. I think that in talking about what happens to people who have been primarily homemakers during marriage, it is very important to distinguish between two groups of women. In the first group there are older homemakers who have been in marriages of long duration, women who have spent 25, 30, 35 years as homemakers. In the second group there are young women, many of whom have been caring for young children.

Many women in the first group, the older homemakers, have really passed the point where they can choose another life course. They face such restricted options because there are no employment opportunities welcoming them. Nor are there realistic options for retraining and counseling. So they cannot move into the labor force easily and they cannot earn anything approaching the income level of their former husbands. That's why the legal standards for those women should provide for them to share the fruits of the marriage—which means that they should share their husbands' enhanced earning capacity, career assets, and the standard of living that they built together. Such is essential because the employment prospects for most of those women are truly dismal.

Chairman **Miller**. When you divide the group into two classes, if I can interrupt you for a second—when you divide them into those two classes, the young marrieds and long-term marrieds/older women, you get a different notion about the importance of decisions about pension income. Does that change at one end of the marriage as opposed to the other? If you are in a marriage for a short period of time, your expectations as to a pension really being a shared asset might be different than a marriage for 20, 25 years.

Dr. **Weitzman**. Yes, there is a difference. Obviously, the financial impact of those decisions is going to vary a great deal depending on the length of the marriage and the size of the pension acquired. But I think the principle is really the same for all marriages. It is the principle that marriage is an economic partnership, and whatever assets are acquired during the marriage really are a result of the fruits of both parties' labor and belong to both of them. So if there is a small pension in a short marriage that is all that is shared. In a long marriage there is likely to be a much larger pension to share.

Let me go back to the second group of younger women—even though it is very simplistic to talk about only two groups of women. Obviously, it is a continuum, not a dichotomy. But if we can be simplistic for a minute I think it is useful to talk about why the problems are significantly different for women in these two groups.

For the older woman it is appropriate to assume she will share the fruits of the marital partnership. But it is inappropriate to expect her to be employed at her husband's level. And it is unfair to assume that she will find employment or that she can become self-sufficient at anywhere near the same level as her former husband. In my interviews with these women, they reported being turned down for hundreds of jobs—of trying and trying to get jobs and being turned down for all of these jobs. And they couldn't get counseling and retraining because there were no jobs and no opportunities available. They even had trouble finding minimum-wage, low-paying jobs that were a social embarrassment.

Their stories are heartbreaking: The 55-year-old wife of a college professor ended up selling hamburgers at Wendy's; the wife of a corporate executive, who had been president of the PTA, was offered a job as a sales girl at Saks Fifth Avenue and is embarrassed to take it because of what that means socially in terms of her former status and her former friends. As she said, no one offered her the job of president of the corporation because she was president of the PTA. So the group of older women have very distinct and severe employment problems.

The other group of women, the young women, I think, are in an entirely different ball park. Here it is reasonable to talk about education, training and good jobs. Investments in their human capital—in their education, counseling, and retraining—are going to pay off, even in the short run. And the long-term prospects for them are even better. So that every dollar invested in their human capital after divorce will pay off in long-term employment gains—not only for them—but for their former husbands and their children as well.

In fact, research done by Dr. Frank Mott at Ohio State showed just that. Mott followed a group of women for 1 year after divorce. Some of the women went back into the labor force immediately upon divorce. Most of them ended up in dead-end, low-paying jobs, not earning very much money. But they were earning some money. The other women took 1 year out for counseling and retraining. At the end of the 1 year, they were able to find much better jobs and to earn higher incomes than the women who went immediately back into the labor force.

These data suggest that investment in divorced women in earning potential is really going to pay off in the long run, and that is why I think the support for counseling, education, and retraining are the kinds of investments that we, as a society, should be making in these women. Most of them are young. Most of them are interested and eager in becoming self-sufficient and financially independent. The problem is, if we push them right back into the labor force, the kinds of jobs that are available to them are not the kinds of jobs that offer opportunties for growth and career advancement.

Nor are they the kinds of jobs that will enable them to support their children. In fact, one-third of the women who are employed full time cannot earn enough to support their children above the poverty level. That means that we, as a society, really have to invest in their future human capital and their earning potential.

Chairman MILLER. Or increase the minimum wage; one or the other.

You know the Congress got very enthused about the enforcement of support payments when we started to understand the extent to which we, in terms of the public sector, were underwriting the failure of responsibility, however you want to characterize it, the nonpayment of child support. We were in fact underwriting it. I think Wisconsin started to address some of this earlier than we got into it.

Your testimony is also troubling because it suggests that even where there is 100 percent support compliance, we are seeing that same public underwriting is needed to provide the income resources necessary to maintain that family unit. Is that accurate? It is not just the noncompliance with the court order which is the problem?

Ms. WEITZMAN. That's right, it is the low level of the support awards as well.

Chairman MILLER. Those arrangements in and of themselves are so insufficient that we come into the picture through AFDC or food stamps or through a whole series of child care subsidies, whatever it is. We show up there filling that gap. What your testimony and previous testimony starts to point out is that in fact some portion of that—and I think, Ms. Austin, I don't know if it was your testimony or Dr. Hoffman's, but that the potential resources are there in terms of the billions of dollars that should be available from the "private sector, the family" to support that unit. The shortfall is in fact being absorbed by the State of Wisconsin or the Federal Government, and I assume that is being replicated 50 times.

Ms. AUSTIN. The ability-to-pay studies that have been done clearly indicate that the noncustodial parent has much greater of a capacity to provide support than is being either collected or ordered. The two things that we tried to address in Wisconsin were, No. 1, the collection problem, which is what we went with, the automatic payroll withholding. Right now I think we are the only State to have that. The Federal legislation did not go as far as Wisconsin. This is an automatic like you take out your Social Security or your income tax, so we tried to address that.

The second is the level of awards, and there is a lot of feeling around what the noncustodial parent should contribute in terms of what is fair. So what we used was a percentage of income standard of income and assets which was very controversial to say that dad should pay 17 percent of his income if he makes a great deal of money was not something that was easily considered fair by some of our legislators. But the percentage standard, we think, does address fairness, and I think a lot of the ability-to-pay issue is around whether or not the awards are fair. And if you are not going to get at fairness and equity in terms of splitting that income, then you are going to have a continuation of the situation where she is providing the primary support.

Chairman MILLER. Does that definition of income incorporate some of the points raised by Dr. Weitzman?

Ms. AUSTIN. I think it does.

Chairman MILLER. Does it go to pension benefits, retirement?

Ms. AUSTIN. Oh, it is income assets, gross income and assets, and the asset question which I think she talks about and writes about sometimes—now we have got several outs for the judge who gets pretty uncomfortable with these kind of black and white rules, so our legislation was a political compromise, but some of our judges are indeed considering the kinds of things that she talks about in terms of investment and education and benefits that are long term. All the judges don't choose to see those, and the law doesn't specifically address it, but certainly we encourage that with the education that we do with our judges.

Chairman MILLER. Well, it is an interesting notion. I am encouraged. We will see when the Wisconsin program goes into effect how well it works, but I think it is clear that when we focus just on nonenforcement or noncompliance, we are addressing a very small piece of the program in terms of what then falls upon the shoulders of the public sector, especially in terms of the economic experiences of these women afterward, which apparently lasts for a long period of time.

Congressman Coats.

Mr. COATS. Thank you to each of the panel members for what I think is some important and valuable testimony. Dr. Weitzman, thank you for your testimony, and also your recent book. I think it makes a real contribution to our understanding of divorce and the obligations of parents and where they are and are not being met. I appreciate that.

Dr. Keeton, I was particularly interested in your testimony because it tied in with what I said to the first panel, and that is, is there a way in which we can, while not totally solving the problem, at least alleviate some of the later consequences. Such as suffering and problems that you as a professional have to deal with by working on the front end. Is there a way we can break that chain?

You mentioned raising a national consciousness regarding positive family strengths, and particularly in your testimony you stated two things: better preparation and continued training in relationship skill development during various stages of the marriage life cycle. What specific things can we do in terms of better preparing people for marriage and the obligations of marriage, responsibilities, and the conflicts and problems they are going to have to deal with and the relationships they are going to have to deal with in that marriage before marriage?

Mr. KEETON. Mr. Coats, premarital counseling has been a frustration for most people I know whether they are involved in it as psychologist, marriage and family counselors, or ministers primarily because of the attitude that I think most young people have as they approach marriage. These young people are not thinking that they are going to be the ones to have difficulties in this relationship. They are not hurting at the time, and they are anticipating the roses and flowers of the marriage emphasis to continue forever.

So it is difficult to get a hearing from young people who are planning marriage. However, I do believe that out of some good research and some materials available that there are better opportunities to be involved in premarital counseling with partners who are choosing to be married. But I have discovered out of experience that if we can develop a relationship with these young people in the planning stages, particularly through the churches, because there is still a large number, large numbers of couples who want to be married within the context of the church.

If we can develop a relationship with them and an understanding that the marriage development is an ongoing process; that we would like for you to come back and let's evaluate this relationship after the first year or perhaps after the first 2 years. Or the churches and community agencies can provide support groups for young marriage partners to explore together the various frustrations and difficulties and share the successes that they are experiencing. So while I think that premarriage guidance is often a difficult prospect, early marriage enrichment is a real possibility.

Back to this concept of consciousness raising, I think we are dealing with attitudes. If we could somehow influence our attitudes in society that developing strong marriages and families takes intentional effort and that there are some basic skills that we can learn, that we can apply to this challenge. The research of Nick Stinnett, Jerry Lewis in Dallas and some of the others now are helping us to understand by studying large numbers of families that there are some basic family strengths and skills that can be learned by individual family members, husbands and wives.

I also believe, Mr. Coats, that these are skills that can be introduced to divorced families, as well, in the process of divorcing. As I have suggested, there are various kinds of marriages. There are various kinds of divorces. It seems to me as counselors and other helping agencies that perhaps we can even work with marriage partners who have chosen to divorce to engage in that process with more of a deliberate attempt so that they will do less damage to themselves and to the children and to the continued development of the children.

This will come about, I think, only when we can have this consciousness raising. I think of the idea of the physical fitness programs. You know, it finally caught on. We really now are giving attention to good nutrition and physical fitness, and we have programs even in elementary school of recognizing children with the Presidential Fitness Awards. If we can apply those kinds of concepts of principles into area of building family strengths, then I think, perhaps, eventually over time we can raise the level of thinking and attitudes about building marriage and family strengths.

Dr. WEITZMAN. May I add to that?

Mr. COATS. Sure.

Dr. WEITZMAN. I think in a very profound way divorce rules affect marriage. When we change the rules for divorce, we also change the rules for marriage, and we change the rules for what we expect of husbands and of wives and of parents. For example, when we order very little child support we are saying that fathers don't really have to support their children after divorce. So we are really redefining the obligations of fatherhood and parenthood. Similarly, when courts do not award alimony and say that women are expected to be economically self-sufficient after divorce. If, at the point of divorce we change the rules and say women do not need alimony, but rather they should go out and support themselves, we are changing the rules for what is expected of wives and mothers in marriage—and are redefining marital obligations.

What we are really saying is that investments in family and children for all those years don't really count, because at the point of divorce we are going to treat them exactly as if they hadn't done that—as if they hadn't been mothers and homemakers—exactly as if they had in fact been employed full-time during marriage.

So one way in which family responsibilities are defined and enforced is by how they are treated at divorce, and the kinds of expectations and obligations that we articulate in the rules that we have for divorce. And that includes the way we define property and the way we divide property; and whether we treat the fruits of the marriage as products of a marital partnership; and whether we give equal weight to the contributions of both parties; and whether we divide family income after divorce through child support and through spousal support so that family members share the same standard of living.

The way we treat people at divorce has a fantastically important, profound impact on what we mean by marriage and the responsibilities of marriage.

Mr. **Coats**. Would you put no-fault divorce laws in that category?

Dr. **Weitzman**. Certainly, because the underlying message of no fault is that you can leave your marriage when it is no longer personally satisfying. The other half of that, though, is the economic consequences of leaving that marriage. Do we make it expensive or not? Can people simply abandon the economic responsibilities of marriage? We do not have to go back to a fault system of divorce—and, by the way, in general the people we interviewed are supportive of the no-fault concept to show that we take seriously the economic responsibilities of marriage. If we enforce support and share marital property, we show that we treat seriously the responsibilities that people undertook when they got married.

Mr. **Coats**. Do any of you see a benefit from laws which require certain cooling-off periods or certain requirements for counseling prior to the granting of a divorce, or is it too late? Are we just spinning our wheels, wasting our money? In other words, once a couple files or once they initiate the legal proceedings, a law which would require that they obtain some type of predivorce counseling; is that productive or not? I'm sure it would be productive for the psychological profession in terms of future business, but I mean in a substantive way. Would it make a difference?

Mr. **Keeton**. I would like to respond to that. I think that it potentially is productive but perhaps not necessarily in the assumed way that somehow the counseling is going to bring these partners back together. I have been involved in experiences in which the couple, through strong recommendation, have come after they have discussed divorce and each has obtained his or her own attorney, and as a result of experiencing counseling they have reversed their decision and decided to work on the marriage.

However, that experience is not common. Counseling that is valuable works with these partners to help them to understand more of what has gone on; that is, what led them to this point. Counseling can be especially helpful if partners are helped, particularly in moving through the process of divorcing toward more responsible decisions for themselves, but particularly for their children. And this gives us an opportunity as counselors to introduce the notion of divorce mediation which often is more of a humane way of going about this process than the litigation that might occur with separate attorneys.

Mr. Coats. Thank you, Mr. Chairman.

Chairman Miller. Dr. Weitzman, what about remarriage in your studies? What impact did that have on long-term economics of divorced women?

Dr. Weitzman. I didn't study remarriage directly. However courts often anticipate remarriage and assume, incorrectly, that remarriage is going to occur and they make support awards and property awards on that assumption. In fact, that assumption is inappropriate for many divorced women. The statistics are that if a woman divorces at age 40 or over, she has only a 1-in-4 chance of remarriage. So, for many divorced women, remarriage is not in the future. The kinds of awards that are made at the point of divorce, in fact, determine her economic future for the rest of her foreseeable life.

Therefore, assuming remarriage—assuming either that there will be some other man around to take care of her, or from the male perspective, assuming that he is going to have another family to support, and we, therefore, should not make him pay child support or spousal support is inappropriate. It is also inappropriate to say we do not have to worry about the family home because he needs his money so that he can go out and build another life. Those kinds of assumptions are really inappropriate at the point of divorce. He should first face his present obligations.

It would be more appropriate to ask, How can we equalize the standards of the two households right at the time of divorce? How can we preserve the home for children so that they can maintain their standard of living? Then, if people do remarry—and by the way, I think these rules will in fact create a disincentive to remarry—but when they do remarry, then they can come back and modify the awards, rather than building it into the divorce equation from the beginning.

I don't know if I have addressed your question.

Chairman Miller. Do you see anything in terms of people you studied that would lead you to believe, or other members of the panel, that would lead you to believe that somehow this is going to change; that women will come to marriage better prepared for divorce, if you will? That's not a delicate way of stating it, but the notion that women will achieve a higher educational attainment with the changes in discrimination and enforcement of sex equity laws and higher education opportunities. Is there any real reason why we would believe that these situations would change dramatically?

Dr. Weitzman. I think we are really at a critical juncture right now because we can still change the law. But one possibility is that women will take to heart the underlying message in these divorce laws and realize that it doesn't pay to invest in marriage. The only safe investment is in one's own earning potential and a career. It doesn't pay to have children, because——

Dr. MILLER. Usually, by the time you get that out of the way, you won't be getting married anyway.

Ms. WEITZMAN. That's right. That is sort of the new ball park that we are in and the underlying message of the financial implications of the current divorce laws. The other option, though, is that we will change the laws, and that we will say that if people invest in the marital partnership, we are not going to ignore their investment. Rather, we can say that we, as a society, are going to recognize the value of their family contributions and allow them an equal share of the property that they have contributed to.

If people invest in having children, that at the point of divorce we can show we value that investment by giving them the opportunities to get counseling and retraining they need at divorce so that they can recoup their human capital investments in other ways so that they are not penalized for their contributions to their children and families.

I really think we are at a tipping point. The import of the current laws is that marriage and family and children don't pay off for either men or women. On the other hand, we have a chance to change those rules and make them pay off and to compensate the people who invest in children and marriage, and that is, I think, an option that is really before you.

Ms. AUSTIN. Could I comment on that?

Chairman MILLER. Yes.

Ms. AUSTIN. One of the other places we are putting resources is in programs related to young women in general through our public education system and human services, and the message we are trying to convey through a variety of community programs is that young women have choices. It is the choices approach to the issue, but one of the clear messages to them is that they should expect to be able to earn a living for the majority of their life, and that that is not a message that we, although we talk about it a lot, that is not a message that we continue to truly give to our female children. So I think there are lots of ways to approach this, but I think one of the more realistic ones, since I don't have a lot of faith that this is going to change a lot, is that we have to teach her that she should probably not expect the man at the gate when she turns 18, and that she should expect to earn living and she should prepare herself for that marriage or no marriage, children or no children, and societies and families have got to reinforce that.

So I think that is another way to acknowledge what appears to be a grim but current reality.

Chairman MILLER. Dr. Hoffman, you looked at remarriage.

Mr. HOFFMAN. Yes. Remarriage, in our evidence, is the real ticket into improvement. A two-income family is substantially better—and no one should be surprised—than a one-income family. Our evidence was that of women who became divorced, the only ones who really at any point over 5 years after their divorce end up better off than they were initially are those who remarry.

I would certainly subscribe to Professor Weitzman's point that that is an irrelevant issue when you are thinking about a divorce settlement, but it is clearly the economic reality as far as that is concerned.

Chairman MILLER. What happens after the second divorce?

Mr. HOFFMAN. The second divorce? I can't help you with that.

Chairman MILLER. Remarriages statistically aren't doing too well. The chances of remarriages lasting then aren't terribly good, are they?

Mr. HOFFMAN. No.

Chairman MILLER. So it is a temporary improvement. If what we know about divorce happens a second time, there is no reason to believe that it is more beneficial the second time than the first time for either party, right?

Dr. WEITZMAN. I'd like to add to that. I think we also push a lot of these people into remarriage.

Chairman MILLER. Pardon?

Dr. WEITZMAN. We push a lot of these women into remarriage by the kinds of economic disadvantages they experience after divorce. The women in our sample—and this is a minority. I don't think it is a majority, but a minority of women in our sample said that they felt remarriage was their only hope for economic survival.

Obviously if they were able to maintain a family home and to earn a living to support themselves and their children, they wouldn't see marriage as a meal ticket and the only possibility for economic survival.

Mr. KEETON. Mr. Chairman, I just wanted to respond with discomfort that I have. I believe very strongly that the laws should be written in such ways that marriage partners are able to experience equity once they divorce, and recognizing also that we have to deal with these subjects both from the external as well as from the internal perspective, the rather subtle and in some ways rather insidious implication in even discussing what happens after divorce and preparing one's self for the eventuality of divorce puts marriage partners, it seems to me, in a defensive posture; that we enter into the contract, if you will, from the standpoint from either a competition with each other or a defensive position.

Now, I don't have any answer to that other than I have discomfort with the reality that so much of our attention has to be given in our society to what is going to happen if this marriage does not continue and dissolve. If we can perhaps deal with the attitude and the notion and enter in these marriage covenants with full faith that we are going to make this work, somehow it seems to me that we need to be giving appropriate attention, at least, to that positive perspective.

Mr. COATS. Well, Dr. Keeton, you somewhat addressed what I was going to comment on and the question I was going to raise. We were discussing how we can better prepare women entering the marriage for divorce, and it seems to me our emphasis ought to be on better preparing men and women entering marriage for marriage. Rather than having laws on the books that tip in favor of divorce or those in the situation of divorce, maybe we ought to be looking at laws that tip in favor of the marriage.

Chairman MILLER. We could make divorce a felony.

Mr. COATS. Some people might favor that but like some other laws on the books that are felonies, it might not change the situation.

But I do think we are making a mistake if we start with the assumption that divorce is inevitable and that it is a better way out.

Because, as we have heard this morning, it is not a better way out in many cases. I am sure cases can be made that being separated or divorced is better than the situation that had existed in the marriage, but the numbers and the statistics that we have been presented is that the consequences of divorce are severe. This is true not only for the husband and the wife, but for the children. And it is true whether you are looking at the economic consequences, or social consequences or behavioral consequences.

It is just something that we have to recognize, and so if there are some things that we can do to save some people from the pain of divorce, we ought to try to do them. If there are some things that we can do to better prepare people to cope with the realities of conflict in relationships and abilities to resolve those conflicts within the context of the marriage, I think we as a society are going to be much better off.

Chairman MILLER. I couldn't agree with the gentleman more. The combination of what Congressman Coats just said and what Dr. Weitzman said shows we are sending a horrible signal to people about marriage. The fact that half of all marriages appear headed for divorce shows we are not doing adequate preparation or providing adequate resources from whatever source, whether it is the church or the public sector or anybody else, in terms of helping marriages over the rough spots and helping those individuals deal with the stress that comes in that marriage.

We are also sending a horrible signal to those people that we are now telling have a 50/50 chance, that should it go wrong, it is going to be devastating in terms of their economic future. Those two messages might make you tend to turn away from the altar, and think only about yourself, which is also a very devastating message in a society that prides itself on some sense of community.

I think you are quite correct. We are here because as our fact sheet indicates, nearly half of all marriages are going to end in divorce. That's why we are having this hearing. You know, we have tried to deal with a whole set of other factors about how you provide support systems and what institutions in our society are best able to provide support systems for families that are at risk and in trouble at various times. But as we come to a close in this hearing, I think there is a terribly damaging message that is a fact today in our society about the institution of marriage, either for your chances for success or what happens to you if you don't make it.

I think the fact that we know we are expanding the pool of people that are being sent that message, whether they are children or parents or second husbands and wives, there is a tragically expanding pool of our citizens that are encountering some form of that message.

Mr. COATS. Of course, part of that response has to be to make sure that fathers in particular know that when they enter into a marital relationship, responsibilities are going to continue beyond the severance of that relationship. Obviously, there is responsibilities on both sides, but the statistics are clear. Fathers aren't maintaining their responsibilities. They are entering a relationship; they are bringing children into the world and they are walking away from them. And we are very interested, in the results of the child support law that we enacted here.

We are interested in doing more. We are interested in the Wisconsin experiment on responsibility because that message also has to be out there, that it is not something that you can painlessly and effortlessly walk away from once you make the commitment, once you set certain things in motion. Perhaps, with that realization and that kind of enforcement, we will have some people thinking long and hard before they enter in and long and hard before they leave.

Chairman MILLER. Any comments?

Thank you very much for your time and your willingness to provide your information and your experiences to this committee on what clearly is a most difficult and complicated subject.

The committee will stand adjourned.

[Whereupon, at 12:55 p.m., the subcommittee was adjourned subject to the call of the Chair.]

[Material submitted for inclusion in the record follows:]

PREPARED STATEMENT OF EMILY M. BROWN, M.S.W., DIRECTOR, DIVORCE AND MARITAL STRESS CLINIC, INC., ARLINGTON, VA

In the late 60s, when I first became interested in the issues of divorce, services for divorcing families were, by and large, non-existant. There were provisions for evaluation and adjudication of custody matters, and some counseling by court staff in a few cities, but no services that helped the members of divorcing families resolve the crisis or the long-term issues of divorce. Personal support systems - friends, family, church, and neighbors - usually dropped out of sight at the time of separation, leaving families totally on their own to handle the crisis. Much has changed since then.

Programs for divorcing families first began appearing in the early 70s. The impetus was multi-faceted. Some programs were developed by those who had experienced divorce, knew the problems, and wanted to develop better solutions. Others programs were established to try to prevent divorce. Still others were the result of well-meaning impulses to help (usually to help the children of "broken homes"). And some programs (usually professionally designed) have been carefully thought out and designed to tackle one or more of the problems of divorce. As descriptive and research data has accumulated from these and the other programs that have been established in the last decade, we know a great deal more about resolving the problems of divorce.

What we are not yet doing is to use this knowledge to design integrated approaches to resolving these problems. We have a patchwork, with attractive patching going on in some areas, while ripping and tearing proceed in other areas. For example, adversarial aspects of our legal system encourage and reinforce parental conflict. Yet parental conflict has been shown to have a negative impact on children of divorce1. A less dramatic example: although it has been shown that children of divorce do better when their parents are able to function as parents2, most programs for children of divorce ignore the parents.

In considering policy regarding children of divorce, it is essential to consider the multiple facets of the problem, and their interrelationship. What needs to happen so that children of divorce are able to resolve the crisis and resume their own growth? There is widespread agreement that children of divorce benefit from:
1) Sharing their feelings about their situation with others, in an emotionally safe environment
2) Parents who are able to function as parents
3) Adequate and dependable household income
4) A continuing relationship with both parents
5) Being accepted as normal, as opposed to damaged or stigmatized, in their community.

Public policy needs to encourage the integration of multiple approaches. Divorcing families need to be able to draw on a constellation of carefully designed services. These should include:

1) Information about all aspects of divorce, including resource materials and services, which is easily accessable to anyone considering or in the process of divorce
2) Education and guidance for parents in planning for divorce, talking to their children about divorce, and helping their children through the divorce process
3) Crisis intervention counseling for parents and for children
4) Long term counseling and therapy for parents and children to address underlying emotional issues
5) Policies and procedures that assure an adequate financial base for single-parent families
6) Training programs that enable women to re-enter the job market at adequate levels of compensation
7) Mediation services which provide parents with a non-adversarial forum in which to reach agreement about their parenting arrangements, property, and finances, and which reinforce rather than undermine parental functioning
8) Staff who are knowledgeable about divorce, and are non-judgemental in their attitudes and their terminology

I still encounter those professionals who spend their energy focusing on fault and blame, or on preventing divorce by refusing to offer divorce-related services. We have divorce, and we are going to continue to have divorce. Fault and blame are irrelevant. We need to use our present level of knowledge to help families cope with the crisis of divorce and develop strengths that they can pass on to succeeding generations.

FOOTNOTES

1. Nye, F. Ivan. "Child Adjustment in Broken and Unhappy Unbroken Homes." Marriage and Family Living. November, 1957, p. 356 - 361.

Wallerstein, Judith, and Kelly, Joan. Surviving the Breakup: How Children and Parents Cope with Divorce. New York: Basic Books, 1980.

2. Hetherington, E. Mavis, Cox Martha, and Cox, Roger, "Divorced Fathers," Family Coordinator, October 1976, Vol. 25, No. 4, p. 417 - 428.

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July 1, 1986

Hon. George Miller
Chairman
Select Committee on Children, Youth, and Families
U.S. House of Representatives
House Annex 2 Room H2-385
Washington, D.C. 20515

Dear Chairman Miller:

At your invitation, I am pleased to submit the enclosed written statement for the hearing on "Divorce: The Impact on Children and Families" held by the Select Committee on Children, Youth, and Families. This statement is entitled "Inadequate Child Support Awards: Causes and Policy Implications."

The statement addresses an issue that has received very little public attention: that child support awards fall far short of the true costs of rearing children. In the statement, we call the attention of the Committee to recent research which points to an "award level gap" conservatively estimated at more than $15 billion-- the amount by which child support orders are deficient relative to economic estimates of the normal costs of child rearing. This compares with a "compliance gap" of $3 billion, which has been the focus of most legislative efforts to improve our nation's system for child support enforcement.

It is clear that this shortfall in adequacy of child support awards adversely affects the living standards of children in single family households. In the statement, we provide suggestions for initiatives to remedy this shortfall.

Thank you for the invitation to submit a statement to the Committee. Please let me know if I can provide further assistance.

Sincerely,

Robert G. Williams

Robert G. Williams, Ph.D.
President

INADEQUATE CHILD SUPPORT AWARDS: CAUSES AND POLICY IMPLICATIONS

STATEMENT TO SELECT COMMITTEE ON CHILDREN, YOUTH, AND FAMILIES U.S. HOUSE OF REPRESENTATIVES

Robert G. Williams, Ph.D.[1]

Introduction

The deficiencies of the child support enforcement system in this country are well known and have been most recently addressed by Congress with the passage of the landmark Public Law 98-378 in 1984. While this law greatly strengthened available remedies for enforcing child support orders, it only tangentially addressed the issue of adequacy of orders. It did so by requiring that each state develop a child support guideline (defined in regulations as a numeric formula) by October 1, 1987.

Recent studies have determined that greater attention needs to be focused on issues relating to the adequacy of child support orders. Research performed under the Child Support Guidelines Project shows that average orders amount to only about 70 percent of the poverty standard for the children due support and only about one-fourth of the estimated normal levels of expenditures on children within intact families. Another recent study estimates that $26.6 billion in child support would have been due in 1984 if child support were set based on guidelines that account for the true economic costs of raising children.[2] By comparison, a Census Bureau study on child support found that $10.1 billion in child support was reported to be due in 1983 and $7.1 billion was actually collected.

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[1] President, Policy Studies Inc., Denver, Colorado. Principal Investigator, Child Support Guidelines Project, funded by U.S. Office of Child Support Enforcement and administered by National Center for State Courts; served as Project Director for two and one-half years. Also, Project Director, Michigan Interstate Child Support Demonstration. Member, Colorado Child Support Commission. Any opinions expressed in this statement are those of the author and do not necessarily represent the views of the U.S. Office of Child Support Enforcement or any other federal agency.

[2] Ron Haskins, et al, Estimates of National Child Support Collections Potential and the Income Security of Female-Headed Families, Report to Office of Child Support Enforcement, Bush Institute for Child And Family Policy, University of North Carolina at Chapel Hill (April 1985).

It can be seen from these figures that there was a "compliance gap" of $3 billion in 1983, but an "award level gap"of more than $15 billion. A gap of this magnitude obviously has a major adverse impact on the living standards of children in single-parent households. This award level gap is more than five times the compliance gap even though most of the federal and state legislative efforts are directed at improved enforcement measures. Even though improved enforcement tools afforded under P.L. 98-378 are greatly strengthening the child support system, more attention needs to be focused on improving the adequacy of orders that are being enforced.

Shortfalls in Levels of Awards

There are several measures of the costs of rearing children which can be used as standards for assessing the adequacy of child support orders. One useful measure for the minimum costs of child rearing is provided by the U.S. Poverty Guideline, which is defined at an attempt to "...specify the minimum money income that could support an average family of given composition at the lowest level consistent with the standards of living prevailing in this country." Based on the 1986 Poverty Guideline, the minimum cost of rearing a given child is $157 per month.

Other measures for the costs of rearing children are found in various governmental and academic research studies on household expenditure patterns. Of these studies, we have found the most credible and authoritative to be Investing in Children, by Thomas Espenshade of the Urban Institute.[3] As do other economic researchers, Espenshade has found that there is no absolute standard for the "cost" of rearing a child. Rather, economic studies are able to infer the "cost" of rearing a child at a given income level only by observing the actual expenditures allocated to a child in families with that income. Such studies have concluded that the "costs" of rearing a child are inextricably dependent on the level of household expenditures. As overall household spending increases, some of that additional spending is allocated to children as well as adults. Thus, it "costs" more to rear a child in a middle income household than in a poverty level household. Since spending on children increases as household incomes rise, the most appropriate measure for the "costs" of children in households above the poverty level is the actual levels of expenditures on children observed in intact families.

Espenshade has estimated the levels of expenditures on children within intact households at low, middle, and high socioeconomic levels. In 1981 dollars, these levels for middle socioeconomic levels were $492 per month for one child, $763 per month for two, and $956 per month for three. These figures can be related to percentages of gross household income. Again for middle socioeconomic levels, Espenshade has estimated that expenditures on one child amount to approximately 19 percent of gross income for one child, 30 percent for two, and 37 percent for three.

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[3] Urban Institute Press, Washington, D.C. (1984). This study was funded under a grant from the National Insitute of Child Health and Human Development.

Child support orders are tragically deficient when measured against either of these standards: the minimum amount needed to support a child as represented by the poverty guideline, or the average level of expenditures on children in intact households.[4] The 1981 Census Bureau study of child support reported that the mean court-ordered child support obligation in effect during that year was $171 per month. This obligation covered, on average, approximately one and three-fourths children.

This average court order would have supported one and three-fourths children only at 70 percent of the poverty level in 1981. Based on Espenshade's estimates, which we regard as the most authoritative available, the average court-ordered obligation would have covered only one-fourth of the normal expenditures made for one and three-fourths children in a middle socioeconomic status household. Considered another way, the average level of court-ordered support in effect during 1981 was only 12.4 percent of average male income during that year. Based on Espenshade's findings, average spending on the number of children covered by court orders would have amounted to about 27 percent of household income in a middle socioeconomic status family.

From these findings, we have concluded that courts, prosecutors, and child support enforcement agencies establish orders that fail to recognize the true costs of raising children. These findings are consistent with the more recent study by Haskins et al, noted above, that estimates a total child support potential of $26.6 billion if orders were set based on economically based guidelines, rather than the $10.1 billion reported to be owed under existing orders. Our work in fifteen states during the past year also corroborates these findings. There is considerable anecdotal evidence that many courts and child support enforcement agencies set orders that fall well short of the shares of parental income that children would receive in intact households.

Causal Factors and Policy Implications

The deficit in child support orders partially results from inadequate initial child support orders. Probably to a larger degree, however, it results from the absence of systematic updating procedures for child support awards. The statistics on child support levels for 1981 referred to those orders in effect in 1981 and therefore included some orders set many years earlier as well as those that were newly established. Since the value of child support orders erodes with inflation and increasing obligor income, orders that are more than a few years old can be greatly inadequate even if they were initially established according to a reasonable standard.

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[4] Espenshade's estimates for middle socioeconomic status households do not represent a precise average for U.S. households, but they are a reasonable approximation.

Rectifying the inadequacies in child support awards therefore requires two separate programmatic initiatives. First, standards should be set for initial awards to ensure that they are established in accordance with sound economic evidence on the costs of child rearing. Second, effective programs for periodic modification of child support orders should be established so that orders can be updated in relation to the current circumstances of the parents and needs of the children.

Standards for Initial Awards. The first initiative, establishment of standards for initial awards, was partially addressed in the Child Support Enforcement Amendments of 1984 (P.L. 98-378). This legislation required that states develop and implement child support guidelines by October 1, 1987. Although this basic requirement represents a step forward, it does not specify the type of guideline that must be adopted or even that the guideline be systematically applied to new orders. Rather, states can adopt guidelines at minimal levels, if they wish, and they can issue advisory guidelines rather than mandating their use as a rebuttable presumptions. Used as a rebuttable presumption, a guideline must be considered by the courts or hearing officers and findings must be issued if orders deviate from the guideline.

Many states have taken even this limited mandate seriously and have used the opportunity to develop sound, comprehensive guidelines that ensure more adequate initial awards. By our count, at least seventeen states have implemented guidelines that appear to satisfy the statutory mandate. Virtually all of the guidelines adopted so far also set awards at levels that are reasonably consistent with economic evidence on child rearing costs. Based on work currently underway, it is apparent that many other states will follow suit prior to the deadline. In some states, however, there is considerable resistance to guidelines and any that are developed will be issued as advisory rules. In some states where there are particularly strong traditions of low orders, it will difficult to develop guidelines that increase awards to appropriate levels.

With so many states actively working on guidelines, it would be premature for Congress to strengthen the requirement for their implementation yet. Following the deadline of October 1, 1987, however, it would be beneficial to review carefully the results of activity by the states. If compliance by a significant number of states is pro forma, with only advisory or permissive guidelines issued, Congress should give serious consideration to mandating implementation of guidelines as rebuttable presumptions. Moreover, if many states have established guidelines at levels below what is indicated by credible economic evidence on child-rearing costs, Congress should consider mandating review and approval of guidelines by the Office of Child Support Enforcement in relation to current authoritative economic data.

Systematic Procedures for Periodic Modification of Child Support Orders. The second initiative that is needed, systematic updating procedures for child support orders, is a more serious and less tractable issue. Once orders are set, there is no routine, self-starting process for getting them modified to account for changing circumstances of the parties and evolving needs of the children. Indeed, in the great majority of states, a parent must not only petition a court for a modification, but also has the burden of proof to demonstrate that a modification is justified. The most frequent criterion is that the petitioner must show that there has been a change in circumstance that is continuing and so substantial that it renders the original award inequitable. Some states have even required a showing that the original order would be "unconscionable" if the modification is not granted. These types of legal barriers, in conjunction with the need to retain attorneys and deal with a court process, pose major deterrents to obtaining needed updates of orders. In turn, the lack of routine modification is probably the most significant contributing factor to the inadequacy of awards.

A handful of states have made efforts to facilitate modifications. Delaware requires a showing only of any change in circumstances to grant a modification and it has a very accessible modification process in the Family Court. Michigan permits parties to petition for a review of an order every two years without regard to changes in circumstances. Minnesota has a provision for a default cost-of-living adjustment that can be invoked by the obligee. These actions mitigate the problem of outdated orders, but they still require some type of initiating action by recipients of child support. This need for a petition appears to compromise the effectiveness of even these less restrictive modification criteria and more accessible courts.

One state -- New Jersey -- has initiated a systematic upward modification program for all cases in the child support enforcement program. Following implementation of a new statewide child support guideline, New Jersey has been identifying all orders more than two years old, reviewing earnings data for the obligor, and, if appropriate, bringing the cases before hearing officers for adjustments. It is too early for New Jersey to have formally evaluated the results of this program, but early results point to significant increases in average orders and a notable reduction in the number of cases requiring Aid to Families with Dependent Children (AFDC) following a review of child support due.

Conclusion

It appears from our research that deficiencies in the level of child support orders represent a serious gap in federal policy toward child support enforcement. The "award level gap" exceeding $15 billion dwarfs the "compliance gap" of $3 billion that was the major focus of P.L. 98-378. This award level gap results from initial orders that do not reflect the true costs of child-rearing.

It also results from the absence of a systematic process for updating child support orders.

To remedy this serious shortfall in child support orders, additional research is required to further define the problem. In addition, follow-up legislative action will likely be required as indicated by the research findings. State actions to improve the adequacy of initial awards can be reviewed after the October 1, 1987 implementation deadline for child support guidelines. If many states are only in nominal compliance, and have established only advisory guidelines or have set guidelines that are too low in light of economic evidence, a more definitive requirement for adequate child support guidelines would be in order. In this context, additional economic research on costs of child-rearing would also be very useful, since much of the data used as the basis for setting guidelines is derived from older databases and does not deal with the special circumstances of single-parent households.

There is a particular need for more research on the area of modifications. Very little is known about the extent to which the "award level gap" is caused by out-of-date orders versus low initial orders. Similarly, there are no statistics available on the length of time that orders go unmodified and the magnitude of changes when modifications are granted. When the problem is more precisely defined, it will be important to fund demonstration projects to test several different approaches to systematic updating. Routine modification processes pose major administrative challenges to courts and child support enforcement agencies. Designing and testing several operational models would be a prudent prerequisite to mandating national implementation of such processes.

The implementation of child support guidelines will help remedy the modification problem by providing objective standards against which petitions for change can be reviewed. In recent legislation, Colorado and Vermont have set respective 10 and 15 percent default thresholds based upon reapplication of their new guidelines, above which modification petitions are presumed to meet the statutory standards of continuing and substantial change. While these measures represent important progress, it appears that more systematic (and semi-automatic) approaches need to be developed before the award level gap in child support can be substantially closed. We do not yet know the precise impact of inadequate child support on living levels of children in single parent households. It is apparent, however, that this little known and poorly understood problem is an important contributing factor to the adverse economic conditions to which many children are consigned in the absence of adequate child support.

INSTITUTE FOR SOCIAL RESEARCH,
Ann Arbor, MI, June 27, 1986.

Select Committee on Children, Youth, and Families,
House Annex 2, Washington, DC.

Enclosed is the report that I mentioned to you the other day. The summary and conclusions section is more comprehensive than I was remembering at the time I talked with you. It leaves out some details, such as the course of the data and any explanation of what the different hypotheses entail. I drafted an abstract to accompany the paper, and it covers these missing items. There is, of course, considerable overlap between it and the summary and conclusions section. You might want to use two in conjunction, or take pieces from each. If I can be of further assistance, please let me know.

Sincerely,

MARTHA S. HILL,
Associate Research Scientist.

"ADOLESCENT YEARS WITH PARENTS DIVORCED OR SEPARATED: EFFECTS ON THE SOCIAL AND ECONOMIC ATTAINMENTS OF CHILDREN AS ADULTS", REPORT BY MARTHA S. HILL, WITH SUE AUGUSTYNIAK AND MICHAEL PONZA, SURVEY RESEARCH CENTER, INSTITUTE FOR SOCIAL RESEARCH, UNIVERSITY OF MICHIGAN

ABSTRACT

The focus of this paper is on long-run effects of father's absence due to divorce or separation. The effects are assessed in terms of the social and economic consequences during adulthood for children experiencing this type of parental situation when in adolescence. Both the overall effect on a given type of socio-economic outcome and possible components of it are investigated in an effort to better understand what it is about this situation that may be harmful to children.

Throughout the analysis the effects of being in a mother-only situation produced by divorce or separation and lasting through at least two years of the child's adolescence are compared with the more traditional complete adolescence in a two-parent family. Economic outcomes and one family formation outcome for the child as an adult are examined for effects of this type of difference in parental family life. The Panel Study of Income Dynamics, a representative national study, provides the longitudinal data tracing the situation of children while in adolescence, as reported by their parents, on through into early adult life, when the children, now adults, provide their own reports of their social and economic situation.

In this study, we find evidence of detrimental long-run effects of the mother-only divorced-or-separated situation, but not for all outcomes and not for all race and gender subgroups of children. Harmful effects are found clearly for the economic outcomes, less clearly for the family formation measure. The strength of the effects vary both by race and by gender of the child, generally indicating greater detrimental effects for whites than blacks, with the detrimental effects least prominent among black daughters.

Several hypotheses concerning the reasons for these effects are tested. Strong an consistent support is lacking for most of them. These weakly supported hypotheses include the mother's absence hypothesis (which holds that financial need forces the mother to increase her labor market work load, leaving less time for supervising children, which is harmful to their activities), the welfare stigma hypothesis (which holds that financial need forces the mother to increase her reliance on welfare and that the welfare dependency is harmful to children), the early assumption of adult roles (which holds that financial need forces the child into early labor market or housework duties, which is harmful to their educational attainment), and the role model hypothesis (which holds that parents foster attainment in their children by setting good examples).

The hypothesis receiving the greatest support is what is termed the "net income deprivation hypothesis", which holds that the financial need created by divorce or separation cannot be fully filled by compensatory actions taken by the mother or child and that the remaining income gap between what income they actually have and what they would have had if the father had continued to be part of the family is a source of harmful effects on the ultimate attainments of children. This implies that it is the low income level itself that is important source of harmful effects of the mother-only situation.

Much of the overall detrimental effects of the mother-only situation resulting from divorce or separation, however, remain unaccounted for. This suggests a need for hypothesis development and subsequent testing of new theories.

SUMMARY AND CONCLUSIONS

Both the literature and the work here have investigated a variety of social and economic attainments of children as adults in order to examine the effects of father's absence of the long-run well-being of children. Overall effects have been investigated, as have components of the overall effects, in an effort to test hypotheses about the way the effects operate. The outcomes examined here included educational attainment, more purely economic outcomes (family income-to-needs at age 24 and wages for sons), and a family formation outcome for daughters (whether ever a female head with child by her mid-twenties). Supplementary material on welfare dependency was also included in an appendix. The focal measure of father's absence was whether the child was in a mother-only situation produced by divorce or separation and lasting at least two years.

The literature dealing with the overall effects of father's absence has found small independent detrimental effects with respect to academic achievement, earnings, occupational status, income, wages, welfare dependency, chances of becoming a female head with child, pre-martial pregnancy, and timing of childbearing, but conflicting results with respect to some family formation—marital stability and marriage timing. More sizeable effects have sometimes been found when socio-economic background factors associated with the likelihood of a father's absence occurring have not been taken into account. These past findings have been replete with race and gender differences, but not ones that were consistent across the different outcomes.

In the present study, the effects for children as adults were concentrated among the economic outcomes, with no significant effects appearing for the family formation outcome. There is, however, reason to suspect the lack of significance for the coefficients in the regression indicating chances of becoming a female head with child, and thus our judgment of the effects for this variable may overemphasize significance tests. Almost all coefficients for all outcomes were indicative of detrimental effects, but not necessarily significant ones.

There were also diverse race and gender differences. Although not always the case for all outcomes, one general tendency in the findings was for stronger overall effects among whites than among blacks. Part of this tendency was a general lack of overall effect of the mother-only situation for black females; for them only education was affected. Findings in the literature were not as consistent about the direction of the race difference. While in the current paper some of the effects of the mother-only situation on the outcomes, especially the economic ones, were quite large, they were not uniformly large and significant for all race-gender groups.

The current work was an attempt to go beyond assessing overall effects. The mechanisms of the effects of the mother-only situation were a major interest in our work, and this prompted theoretical and empirical modeling. From a theoretical model of parental utility maximization, an empirical model was cast that allowed investigation of several hypotheses about the way that effects of the mother-only situation are felt. The empirical model is a path model, and different aspects of the "paths" were used to test the various hypotheses. Four of the hypotheses tested in the context of this model have been prominent in the literature; these include the mother's absence hypothesis, the early assumption of adult roles hypothesis, the welfare stigma hypothesis, and the role model hypothesis. A fifth hypothesis has not been well spelled out before, although it has been implicit in some of the past work; this is what we term here the "net income deprivation hypothesis." A sixth hypothesis—the stress hypothesis—did not fit well in the context of either the theoretical model or the empirical one, and so it was not tested in our analysis.

Across the different outcomes there was very limited support of the mother's absence hypothesis, and then largely with respect to white sons. For whites only, there was some evidence of a small welfare stigma effect via daughter's greater likelihood of being in a mother-only living situation as an adult. Welfare stigma played little role otherwise. These was no consistent support of the hypothesis concerning the early assumption of adult work roles; the evidence for it was weak and scattered, for labor market work even more so than for housework. Regarding the net income deprivation hypothesis, on the other hand, the evidence was supportive of strong effects of the loss of father's contribution to family income as a result of long-term divorce or separation, although the effect was present in somewhat different outcomes for sons and daugthers and operated differently for blacks and whites. While much of this effect was an income effect, as the net income deprivation hypothesis projects, in the case of the family income-to-needs outcome the evidence suggests that there was some male role model influence involved. Other evidence about a male role model effect showed little, if any, effect of the mother-only situation operating through the available home time of the father. While our research provided considerable information about the five hypotheses that were tested, the analysis left a substantial portion of the sizable overall effects of the mother-only situation resulting from divorce or separation unaccounted for. This raises many questions, possibly more than it answers.

Regarding policy implications of these findings, it is important to keep in mind that this analysis concerned children followed from their late childhood years to their early adult years. Analysis of mother-only situations during the late childhood years may well understate the effects of childhood exposure to such situations because the effects could be more detrimental when the situation occurs during early childhood, or the reverse may be true; it is difficult to say. The mechanisms for the effects could also vary across the different phases of childhood; if so, then early stages of childhood would yield different conclusions about the various hypotheses. At the other end of the achievement process, the early adult years may well be too early to properly assess the long-run outcomes for children as adults. Prime-age adult years may be the more proper stage to measure the level of well-being the child attains as an adult.

With these caveats, the major policy implication of this work would be that measures taken to increase the level of fathers' contribution to family income would be an effective means of counteracting some of the long-range detrimental effects that parental marital disruption has on the well-being of a child. It will not entirely eliminate the detrimental effects, but it could help substantially. Steps are currently being taken to do this, and policy designs must address many complications.

Additional research could help solve many of the mysteries exposed by the current research. The same data set, but with additional waves, could be used to construct a multiple-year fixed-age observation period for adolescence in combination with a fixed-age observation period for young adulthood. Dynamic analysis would be possible, combining information on the pre- and post-divorce change in parental inputs with effects of such changes. This would bypass many of the shortfalls of the current analysis.

One outcome meriting investigation in more detail is family income-to-needs. A question of interest is whether effects of parental divorce or separation could be operating primarily on income or on needs. Designing proper compensatory measures would depend on which of these components of economic well-being is the more relevant. This may help tell us what the as-yet-unspecified mechanisms are for the effects of the mother-only situation.

Two potentially important compensatory factors, not explored in the current model merit further research. The compensatory factors are increases in the income of others in the household, exclusive of the mother and the particular child, and remarriage. Each is a way of compensating for the income losses associated with father's absence and involves the presence of surrogate male role models.

More than just tests of old hypotheses appear to be needed, however. One of the major outcomes of this paper is a strong indication for the need for further development of hypotheses about the way that effects of the mother-only situation operate on the social and economic attainments of children as adults. The combination of several major existing hypotheses accounted for only a small part of the sizable detrimental effects.

PREPARED STATEMENT OF JAMES L. PETERSON, PH.D., CHILD TRENDS, INC., WASHINGTON, DC

INTRODUCTION

The number of children living with divorced mothers more than doubled between 1970 and 1981, rising from 2.3 to 4.9 million. This increase occurred during a time period when the number of U.S. children under age 18 fell by 6 million, from 69 to 63 million. Clearly enormous increases have occurred in the proportion of children experiencing the disruption of their parents' marriage. Since the termination of one marriage is frequently followed by remarriage and remarriages not infrequently end in divorce, many children are exposed to a succession of family types. A snapshot view of American children indicates that in 1983, 75 percent of U.S. children under age 18 were living with two parents (only an estimated 63 percent were with both biological parents, 10 percent with one biological parent and one step parent, and 2 percent with tw adoptive parents). Twenty percent lived with their mother only; 2 percent with their father only; 2 percent lived with grandparents or other relatives, and 1 percent lived with foster parents, other non-relatives, or in an institution. (See Table 1.)

Despite the frequency with which children experience the disruption of their parents' marriages, the resulting diversity of living arrangements among children, and the rapid pace of change, no nationally representative data were available to explore the implications of marital disruption for children before the 1976 and 1981 waves of the National Survey of Children were conducted. The 1981 survey was conducted expressly to provide information on the antecedents and consequences of marital disruption among families with children. In my statement I would like to draw on the analyses of this study, and present the main findings that describe the effects of marital disruption on children.

THE DATA

The National Surveys of Children comprise two waves of a longitudinal study of U.S. children. The first wave, conducted in the fall and winter of 1976-77, was based on a national sample of children aged 7-11 at the time. Information was gathered on 2301 children in 1747 families. In cases where three or more children were eligible in one family, two were selected at random. Weights have been developed to take account of oversampling by race, as well as the number of eligible children in the family and minor discrepancies between sample and census distributions on age, sex, race and residence.

The questionnaires covered a wide range of variables describing the children and their environments: family background and mental health; cognitive, behavioral, and social development; and relations with parents and peers.

The second wave of the survey was conducted in the spring and summer of 1981. It was a follow-up of a subsample (N=1423) of the children, by then aged 11-16. The follow-up focused more specifically on marital disruption and its effects on children. For this purpose, the subsample was chosen to include all children in disruipted and high-conflict intact families as of the time of the first wave, and a subsample of those in low or moderate conflict families. Roughly half the children were in each of these broad groups. Additional weights were developed to take account of the subsampling procedures so that national estimates could again be made. Most of the same background and outcome measures were replicated, and new questions were added to describe family functioning and parent-child relations in even more detail.

In order to obtain multiple measures of the children's characteristics and behavior, data were obtained from three sources: the children themselves, their parents, and their school teachers. Data were collected by interview (from the children and parents) and by mailed questionnaire (from the teachers).

FINDINGS

Children's Experience of Marital Disruption

Results from the 1981 National Survey of Children (NSC) indicate that by age 16, nearly two of five American children are not living with both of their biological parents. (1) Black youth are almost twice as likely not to be living with both parents. In addition, children from more recent birth cohorts are more likely to have experienced the dissolution of their parents' marriage, reflecting the dramatic upturn in divorce rates during the 1970s. Thus one quarter of the children born between 1965 and 1967 experienced disruption by age 12, compared with a third of those born in 1968 and 1969. In addition, black youth are far more likely not to be living with both parents. Overall, one-quarter of white children but two-fifths of black children have experienced marital disruption by age 12. If the children experiencing out-of-wedlock birth are included as experiencing a form of family disruption, the contrast is even greater. Among youth born in 1965-67, 24 percent of white but 50 percent of black youth did not live with both parents by age 12. Among youth born in 1968-69, 32 percent of white and 70 percent of black youth did not live with both parents at age 12.

For many youth, marital disruption is only the first transition they experience (1). Within five years, four out of seven white children but only one in eight black children have entered stepfamilies. More than a third of these stepfamilies subsequently dissolve. Although black marriages are more likely

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*Numbers in parentheses refer to the references found at the end of this statement.

to dissolve, among those children who do experience marital disruption, whites go through more transitions, as their custodial parents are more likely to enter new marriages, and many of these later dissolve. Thus 72 percent of white youth aged 12-16 experience no marital transitions, compared with 59 percent for black youth. However, of youth experiencing _any_ marital transitions, 54 percent of whites, compared with 29 percent of blacks, experience more than one transition. Overall, the NSC data indicate that one child in ten will face divorce, remarriage of the custodial parent, and subsequent redivorce (1,3).

Only one in ten marital dissolutions experienced by the NSC children resulted from the death of a parent (1). Consequently, negotiating new relationships with the parent who is not in the same household (the "outside" parent), who may well not be on good terms with the custodial parent, is a potential problem. The data suggest, however, that for many families the issue either never arises or is resolved by an absence of contact.

Among children residing with one biological parent and having an outside parent who is alive, nearly one-third have had no contact with the absent parent within the past 5 years and an additional one-sixth have not seen their outside parent during the previous year. The remaining half who had seen their outside parent during the previous 12 months were distributed fairly evenly among those with low (less than 14 days), medium (14-51 days) and high (more than 51 days) levels of contact (2).

The data also show that these low levels of physical contact between children and their absent parents are not compensated for by phone calls or letter writing. For example, only 27 percent of the children report that they talk on the phone with the non-custodial parent once a week or more (3). Absent mothers are more likely to be in contact and to visit frequently than are absent fathers; however the sex of the child has no bearing on whether absent parents keep in touch (1, 4), and there is no evidence of a trend toward greater contact among couples married more recently or among younger children (1).

Related results indicate that even those outside parents who maintain contact with their children play only a minor role in childrearing, this role is primarily a social or recreational one, and in most cases does not include a major caretaking or socializing function (4).

Given the high proportion of non-custodial parents who are not in contact with their children, it is possible that substantial numbers of grandparents on the non-custodial side lose contact with their grandchildren, while grandparents on the custodial side seem to be called on for additional financial and emotional assistance. Among divorced or separated parents, 68 percent receive some kind of assistance from their own parents, compared with 59 percent of those in intact first marriages.

Also, 21 percent of divorced or separated parents receive financial, emotional and services support, compared with 4 percent for those in intact families. Correspondingly, divorced and never-married parents are more likely to include grandparents as members of their family when asked to list the people whom they "think about as family" (8).

Among children with step-fathers, those very or quite close to the step-father have more positive school outcomes and are much more satisfied with their families. However, children living with both biological parents are still more likely to be very satisfied with their families and more likely to be doing well in school even compared with those children in step-families who are very or quite close to their step-father (10).

From an historical perspective, divorce has only recently been a primary cause of marital disruption. So, norms for handling relationships with former family members have not yet fully developed in our society. Little direct communication or interaction between former spouses seems to occur following the termination of a marriage. In general it appears that most formerly married couples have little to do with each other and engage in parallel rather than cooperative child rearing. Only a tiny fraction of the parents in the NSC who had experienced marital disruption had developed cooperative child rearing arrangements. Considering only instances in which the absent parent kept in touch with his child, the data reveal a remarkably low level of joint decision-making and cooperative child rearing. Nearly three-quarters of these outside parents were reported by the residential parent to have little or no influence or no involvement in decisions made regarding the child (2).

Consequences of Marital Disruption for Children's Attitudes, Behaviors, and Mental Health

What are the effects of marital disruption on the child's subsequent well-being? Much previous research has searched for simple, long-lasting negative effects under the assumption that divorce was a single uniform event with effects that are inevitably harmful. These early studies have been replaced by analyses of how and under what circumstances divorce alters the socialization and development. Results from the current study suggest that divorce does effect children's well-being but that these effects are more moderate and more complex than previously assumed.

In general it can be concluded that the most positive outcomes for children are found among children raised by both of their biological parents in the context of a happy marriage. Children raised by two parents in a conflict-ridden marriage, by one parent, or a parent and step-parent are at a decided if not overwhelming disadvantage (6, 7, 10).

In terms of specific outcomes, children who had experienced the disruption of their parents' marriage were more likely to have received psychological help or counseling or to be perceived as being in need of such help (6). Children of disruption were also more depressed or withdrawn, more antisocial, more impulsive or hyperactive, and exhibited more serious behavior problems at school (7).

The levels of these mental and behavioral problems varied according to the post-disruption history of the custodial parent. Children, especially girls, appeared to have more problems when living with a custodial parent who had remarried, compared with those living with single mothers. This was especially the case if the remarriage was recent. The worst outcome, in terms of needing psychological help, was for children living with a parent who had been divorced or separated after a second or subsequent marriage (6).

Marital disruptions also undermined children's relationships with their parents, especially their fathers, who were also most often the absent parents (4, 7). Given the extent to which physical contact between children and their absent parents is reduced and often terminated by marital disruption, these results are not surprising. Relationships with outside fathers appear to be less close than relationships with fathers who live with their children (7). More than half the children whose fathers are outside the home say they don't get all the affection they need from their fathers and nearly as many say they are only fairly or not at all close to their fathers (4). Those who saw their absent fathers frequently did not evaluate their relationships to their fathers more favorably than those who saw them infrequently; however those who had not seen their fathers at all during the previous year were considerably less favorable in their evaluations. While the relationship with outside mothers does not appear to be markedly worse than that with custodial mothers, the sample of outside mothers is too small to support clear conclusions.

Outside fathers were considerably less likely to be defined by their children as members of the family; only half of absent fathers were viewed as "family" by their children, compared with virtually all of the fathers residing with their children and even 70 percent of the stepfathers living with the child. In particular, absent fathers seen only 3 days annually or less were very unlikely to be viewed as family members by their children (4).

Factors Associated with Heightened Levels of Risk Among Children Experiencing Marital Disruption

Age

A number of factors have been identified that seem to moderate or exacerbate the effect of marital disruption on children. Children under the age of six at the time of the disruption seem to have more problems in school, and were substantially more likely to have received psychological help -- 31 percent versus 11 percent -- than were older children (6). (See Table 2.)

Conflict

Children exposed to marital conflict that involved physical violence prior to disruption were found to have more problems; however conflict between the parents after separation doesn't seem to affect child outcomes.

In a related finding, conflict in intact families proved to be a powerful predictor of a variety of behavior problems. Among children in intact families the proprotion needing or having received psychological help increased as the level of parental marital conflict increased. The need for help was substantially greater in cases of sustained high conflict, that is if a high level of marital conflict was present at both the first and the second interviews. (See Table 3.) Persistent high conflict in intact families was strongly associated with a number of behavior problems as well, such as antisocial behavior; impulsive, hyperactive behavior; depressed withdrawn behavior, and behavior problems at school. With the cessation of conflict, however, more normal behavior patterns were observed.

Sex

Boys generally exhibited higher levels of behavior problems in response to marital disruption than did girls. This was true for school behavior problems, antisocial behavior, impulsive/hyperactive behavior, and the need for psychological help (6, 7). The one major exception was depressed/withdrawn behavior, which was more prevalent in girls. It is unclear however, whether the greater susceptibility of boys had to do with aspects of the disruption itself, or rather to more general sex differences in vulnerabilities to these kinds of behavior problems.

The sex of the child also made a considerable difference depending on the post-disruption living arrangements. Boys living with their fathers appeared to be no worse off than boys living in intact families. But boys living with their mothers were much more likely to exhibit behavior problems. For girls the situation was reversed -- those living with their mothers were only moderately affected whereas those with their fathers were especially adversely affected (7). (Illustrative results are presented in Table 4 for antisocial behavior. The scores for antisocial behavior are on a scale ranging from 0 (low) to 6 (high), where the mean is 1.4 for boys and 1.0 for girls.)

Unfortunately, the small number of cases of children of either sex living with their fathers makes these conclusions quite tentative. In particular it is not known whether the differences are due to factors which select certain children to live with their fathers, or to the direct effects of living with a father rather than a mother.

Post-Disruption Stability

If the custodial parent was able to provide a stable post-disruption environment, the prevalance of behavior problems appeared to decline. Children of parents who were divorced, separated, or remarried throughout the period between the two surveys had a lower incidence of need for psychological help. In contrast, those whose parents became divorced, or whose custodial parent remarried, or redivorced during the interval had higher levels (6).

Parents' Mental Well-Being

The parents emotional well-being also serves to moderate the impact of family structure on children. Not surprisingly, having a parent who reports that her own life is going well, that she is steady in her handling of the child, and that she hardly ever or never loses control of her feelings is related to fewer problems in school, greater satisfaction with family and the child's perception that his or her life is going very well. Even among children whose parents report moderate or high levels of personal well-being, however, those who have been experiencing marital disruption tend to have poorer school outcomes and to be less satisfied than those in intact families. Among parents whose own lives are not going well and who often feel depressed, the effect of family structure is less consistent (10). Thus the advantages associated with being raised by both biological parents again seem most clear among married parents who are happy and satisfied with their own lives.

Parent/Child Relationships

As noted earlier, parent/child relationships were found to deteriorate following disruption. Parent/child relationships were also found to be strongly related to a variety of child outcomes. Consequently, it might be supposed that children who maintain a positive relationship with parents in spite of the disruption might show better mental health and fewer behavior problems than those who did not. The NSC data confirmed this hypothesis, but the effects were not very strong. Controlling for the relationship reduced the effects of conflict and disruption, but large differences remained (7). (See Table 4, which illustrates the result for antisocial behavior.) Effects related to sex, age, and post-disruption living arrangements were all more important in influencing outcomes.

Contact With The Outside Parent and Parent/Child Relationships

Although the direction of the effect is uncertain, more contact is positively associated with a stronger relationship. More frequent contact between the absent parent and the child is related to children feeling that the outside parent's home is like their own home, feeling extremely or quite close to the outside parent, saying they often do things with the outside parent that they enjoy, and saying that they get all the affection from the outside parent that they want. For example, 87 percent of the children classified as having high contact reported feeling extremely or quite close, versus 44 percent classified as having very low or low contact (2).

No evidence was found suggesting that remarriage affects patterns of communication, assessments of involvement, or problems in relating to the outside parent. In addition, contact with the outside parent was not found to undermine relations with the residential parents (4):

Socio-Economic and Demographic Variables

A number of socio-economic differentials can be found in the analysis of marital disruption and children. For example, black children are more likely to have experienced continued high conflict, to have lived with a continuously separated mother, and to have experienced the divorce of their parents. Children with poorly educated parents were more likely to experience a high conflict marriage, separation and divorce, continued separation, and, in the case of a remarriage, they are more likely to experience redisruption (6). The family income for children living with their mothers after a disruption is especially likely to be low in comparison with those in intact families. In spite of these differentials, however, introducing controls for socio-economic status does not substantially reduce the effects of disruption on children. In some cases it may even strengthen it (7).

Finally, while marital conflict and instability were clearly found related to children's need for psychological help and to a variety of behavior problems, it is important to note that most children who had experienced marital disruption had neither gotten nor needed psychological counseling, nor showed especially high levels of behavior problems. Of those children needing psychological help at the time of the first interview, the majority did not require help at the time of the second interview.

IMPLICATIONS

What conclusions can be drawn from these results that would be of use to parents, service providers, and policy makers? Parents contemplating divorce or separation should consider the heightened susceptibility of preschool children to the effects of disruption, and also the especially harmful effects of persistent conflict with or without disruption. Parents who have already separated should recognize the ameliorative effects of a child continuing to enjoy a positive relationship with both parents. Such a relationship cannot be cultivated with the non-custodial parent in the absence of time spent together. Finally, custodial parents should seek to stabilize their marital status as much as possible: a succession of marital transitions is especially harmful to children.

Since some parents undergoing marital disruption may lack the skills to carry out such recommendations without outside help, service providers, such as counselors and mediators, should be prepared to assist parents in these ways.

At the governmental level some policy goals may also be drawn from these data. For divorcing parents, courts can take into account the importance to the child of a strong relationship with each parent as decisions are made about custody and visitation arrangements. Although the finding that boys seem to do better with their fathers and girls do better with their mothers is tentative, courts should examine the presumption commonly made that, in the absence of compelling reasons to the contrary, children are better off in the custody of their mothers.

For intact families, one of the important policy goals is to find ways to resolve conflicts within families. While in the long run a separation or divorce may be better for a child than continual high conflict between parents, better still is to live in a harmonious intact family. Efforts to reach this goal might include public support for family counseling and mediation services. Public education is another avenue that might be of use not only in reducing family conflict, but also in providing better positve roles for fathers to imitate.

Finally, I would urge continued federal support for research on children, youth, and families. It is through the accumulation of knowledge based on a combination of basic, applied, and evaluation research that the kind of information this hearing seeks can best be obtained and be available when needed and requested.

Table 1

Table 1: U.S. Children, by Family Living Arrangements and Race/Ethnicity, 1983

	All Children		White		Black		Spanish Origin		1970		1980	
	(%)	(n)	(%)	(n)	(%)	(n)	(%)	(n)	(%)	(n)	(%)	(n)
Total	100.0	62,281	100.0	50,873	100.0	9,377	100.0	5,513	100.0	69,162	100.0	61,744
Living Arrangements												
Two Parents	74.9	46,632	81.0	41,231	40.7	3,818	68.5	3,774	85.2	58,939	76.6	47,286
Mother Only	20.5	12,739	15.0	7,616	51.1	4,789	26.8	1,475	10.8	7,451	18.0	11,131
Divorced	8.3	5,190	7.8	3,984	11.3	1,062	8.0	443	3.3	2,296	7.5	4,430
Married, Spouse Absent	5.4	3,334	3.9	1,986	13.5	1,267	9.9	547				
Separated	4.7	2,951	3.4	1,715	12.6	1,184	8.3	460	3.4	2,332	4.9	3,016
Widowed	1.6	1,004	1.4	687	2.8	258	2.3	128	2.0	1,395	2.0	1,260
Never-Married	5.2	3,212	1.9	958	23.5	2,203	6.5	357	0.8	527	2.8	1,721
Father Only	2.0	1,267	2.0	998	2.5	234	1.8	99	1.1	748	1.7	1,031
Divorced	1.1	691	1.2	608	0.8	78	1.0	54	0.3	177	0.8	503
Married, Spouse Absent	0.5	306	0.4	213	0.9	81	0.2	11				
Separated	0.4	258	0.4	188	0.7	67	0.2	11	0.2	152	0.4	235
Widowed	0.2	116	0.2	90	0.2	15	0.2	13	0.4	254	0.3	172
Never-Married	0.2	154	0.2	87	0.7	61	0.4	21	-	30	0.1	75
Other Relatives	2.2	1,349	1.6	815	5.1	482	2.4	130	2.2	1,547	3.1	1,914
Non-Relatives	0.5	293	0.4	213	0.6	54	0.6	35	0.7	477	0.6	382

Source: March 1983, Current Population Survey, special tabulations by the Population Division, U.S. Bureau of the Census.

Table 2

Proportion of Children Ever Receiving Psychological Help or Counseling, By Child's Experience of Disruption of Biological Parent's Marriage, By Age at Disruption. U.S. Children Aged 12-16 in 1981

Disruption of Biological Parent's Marriage	Percent Receiving Help				N (weighted)
	Total	Before Disruption	After Disruption	Timing Undetermined	
Never Disrupted	10.4%	-	-	-	847
Disrupted by Death	7.7	0.0	5.8	1.9	54
Disrupted by Divorce or Separation					
Child 0-6 at time	30.5*	0.3	25.2	5.0	179
Child 7-16 at time	11.4	2.9	8.3	1.2	102
Child Born out of Wedlock	13.2	-	-	-	87

*Significantly greater than proportion for "never disrupted" group, p<.01, one-tailed t-test.

Table 3

Proportion of Children Needing or Having Gotten Psychological Help in Middle Childhood or Early Adolescence. By Change in Marital Situation of Parents. U.S. Children Aged 7-11 in 1976 and 12-16 in 1981

Change in Marital Situation of Parents from Time 1 to Time 2	Proportion Needing/Having Gotten Help[1]			Ns Unweighted	
	By Time 1	Between Time 1 & Time 2 (new cases only)	By Time 2 (total cases)	Cols. 1,3	Col. 2
Biological Parents Married Throughout Period					
Low conflict both times	8.1%	7.1%	14.6%	238	223
Conflict decreased from Time 1	9.2	5.1	13.8	128	122
Moderate conflict both times	9.7	6.2	15.3	144	135
Conflict increased from Time 1	6.8	10.7*	16.7	213	197
High conflict both times	17.2*[2]	22.2**	35.6***	51	40
Biological Parents Separated or Divorced During Interval					
Low or moderate conflict at Time 1	6.1	5.9	11.7	41	39
High conflict at Time 1	15.3	15.5	28.4**	38	33
Separated at Time 1; Divorced at Time 2	15.4	20.8**	33.0**	39	31
Custodial Parent in Same Situation at Both Times					
Divorced	20.4**	15.3*	32.5***	55	47
Remarried	24.1***	10.9	32.4***	68	62
Separated	2.6	26.4**	28.3**	35	27
Further Transition of Custodial Parent During Interval					
Remarried during interval	19.6*	26.9**	41.2***	25	19
Remarriage disrupted	24.2**	21.4**	40.4***	37	28
All Children	12.0%	11.9%	22.5%	1377	1232

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[1] Needing help refers only to the 12 months prior to the two survey dates. Having gotten help refers to any time prior to the survey date. Time 1 = survey date in 1976 when children were 7-11 years old. Time 2 = survey date in 1981 when children were 12-16 years old. Base for middle column excludes cases needing or having gotten help by Time 1. Total N is greater than the sum of the columns as not all marital situations are included in the table.

[2] Asterisks indicate proportions that are significantly different from the proportion for the first group (low conflict both times) at the following levels; using a one-tailed t-test:

* $p<.1$
** $p<.05$
*** $p<.01$

Table 4

Mean Antisocial Scores by Child's Living Arrangements and Sex, U.S. Children Aged 12-16, 1981

	MALES				FEMALES			
	N	Mean Scores			N	Mean Scores		
Living Arrangements	(Unweighted)	(1) Unadjusted	(2) Adjusted for Controls [a]	(3) Adjusted for Controls and Parent/Child Relationship	(Unweighted)	(1) Unadjusted	(2) Adjusted for Controls [a]	(3) Adjusted for Controls and Parent/Child Relationship
All living arrangements	526	1.35	-	-	547	1.00	-	-
Lives with both parents [b]	405	1.23	1.26	1.29	408	0.93	0.97	0.98
Low conflict	176	0.92	0.92	1.01	169	0.76	0.79	0.81
Moderate conflict	153	1.26	1.32	1.33*	167	1.05	1.09	1.08*
High conflict, recent	47	1.66	1.75	1.75*	49	0.98	1.08	1.11
High conflict, persistent	29	2.75	2.62	2.48*	23	1.60	1.51	1.48*
Lives with biological mother	107	2.01	1.86	1.68*	125	1.21	1.05	1.02
Separated, divorced, never married	57	2.30	2.09	1.90*	75	0.93	0.70	0.68
Remarried	36	1.72	1.67	1.58	38	1.65	1.63	1.60*
Redisrupted after remarriage	14	1.76	1.52	1.20	12	1.54	1.39	1.34
Lives with biolologcal father	14	1.15	1.30	1.22	14	1.40	1.46	1.43
Coefficient for 'Living arrangements' Eta (Column 1); Beta (Columns 2,3)		0.308	0.28	0.234		0.199	0.199	0.191
Total variation explained		9.5%	14.1%	17.1%		4.0%	9.0%	11.7%

* These means are significantly different from that for the intact, low-conflict category (p<.05). Significance tests were calculated on the third column only.

a Control variables were parent education, family income, race, and child's age.
b Includes living with two adoptive parents

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ADDITIONAL STATEMENT OF CONGRESSMAN DAN COATS

This hearing clearly documents many of the negative consequences of divorce in our society. Family disruption has long-term effects on all family members, but especially on the children.

There were several areas where I felt additional information was needed for the record.

DIVORCE AND MARRIAGE TRENDS

Varying statements have been made about the number of people who are or will be divorced. The strong implication is that the two-parent family is a relic of the past, a declining minority of today's families.

An overwhelming number of children under 18 still live in a two-parent family. Over the last 25 years there has been a decline, but is is still the typical experience for most children.

A significant number of these children live in families with one biological parent and one step parent, but in fact this demonstrates a societal commitment to the importance of two-parent family relationships.

A repeated statistic one hears is that one-half of marriages will end in divorce. Dr. Lenore Weitzman has written that it is predicted that 40% of American marriages contracted in the 1980s are expected to end in divorce. That is up from an earlier trend of about 25% (Anthony, Children at Risk from Divorce). But it should be pointed out that these are trend projections.

Several additional points should be considered:

(1) Taking the number of marriages in a given year and comparing it to the number of divorces does not give one a correct measurement of the likelihood of success or failure of all marriages (past and future).

(2) The projection rate was based upon the peak rate of divorce of the 1970s. From 1983 to 1984 the divorce rate actually declined. If you projected that out far enough you could "prove" that divorce will eventually virtually be eliminated.

(3) Our primary concern relates to divorce when children are involved.

(4) There is a historically varying base that will cushion the societal impact of divorce rates of one period.

The divorce-rate trends, not to mention the even more dramatic increase in never-married single parents with children, are very alarming. It is of major importance, however, exactly what the facts of these trends are. There is a not very subtle implication that since the failure rate has reached 50% for a short period that we should prepare families as much for failure as for success. There are implications that society is not committed to the primary importance of children having both fathers and mothers in the family. And it is all but accepted as a premise that the trends are not reversible.

I would like to make several points in response.

(1) The continuing commitment to the two-parent family demonstrates that most Americans instinctively know what the facts we heard in this hearing and other Children, Youth and Families Committee hearings have demonstrated: stable family (father & mother) relationships are very important to children, and to their parents.

(2) As a matter of principle, if a trend is as harmful as this hearing has demonstrated divorce is, we should as a society be putting our primary efforts toward changing the trend. This should be true even if the outlook is grim for significant reversal of the problems. Child abuse, alcoholism, and other trends have at times looked equally irreversible yet we continue to try and reverse them because we see the horrible consequences.

(3) It is not true that any trend involving personal choices is irreversible. It is a matter of will and preference. While the long-term trend of divorce has increased, it is not true that it is irreversible. After World War II the divorce rate declined 12 straight years! By 1959, the divorce rate was less than one-half what it was in 1946. This seldom is mentioned and is often treated as a statistical fluke, although it was a long trend. This trend also occurred during the relatively conservative years of President Calvin Coolidge, dropping after a period of gradual rise. The divorce rate looks even less invincible when one looks at the 1980s, once again coincidental with certain more pro-family trends.

This is not to say that the trend toward divorce will suddenly dramatically decline, or that all divorces harm children, but it is important to establish what the facts are regarding divorce so that we can fairly discuss what needs to be done.

CAUSES OF DIVORCE

This hearing addressed the impact of divorce on children and families, not the causes of divorce. The hearing clearly showed how harmful the impact is on children and families. As we now look at ways to reduce this impact, it is important to understand what causes divorce. Too often, in this Committee we seem to look at the results of a problem and conclude that we need to spend more money treating those results, rather than looking at causes and prevention.

Dr. John DeFrain's research (based upon Stan Albrecht's 1979 study and other researchers such as Weiss, 1975; Hunt & Hunt, 1977; Hayes, Stinnett & DeFrain, 1980; and DeFrain, Fricke and Elmen, in progress in 1986) identified the four most important causes of divorce as: (1) infidelity; (2) no longer in love; (3) emotional problems; (4) financial problems.

Dr. Charles Swindoll has written that marriage is a lot like remodeling a home: it takes longer than you had planned, it costs more than you figured, it is messier than you anticipated, and it requires greater determination than you expected. (*Strike the Original Match*, Multnomah Press, 1980)

David Mace, director of the effective Marriage Enrichment programs, has written: "When I try to reconstruct, in counseling with couples, their concepts of the making of a marriage, I find that it adds up to a most confused hodge-podge of starry-eyed romanticism, superstition, superficial concepts, and laissez-faire. Seldom do I find any real understanding of the complexity of the task of bringing two separate individuals into a delicately balanced coordination of each other's thoughts, feelings, wishes, beliefs, and habit-patterns." ("Marriage as Relationships in Depth," from *Marital Therapy: Psychological, Sociological and Moral Factors*, Charles C. Thomas, 1972)

A common description of a marriage is: 1st phase—honeymoon; 2nd phase (can be up to 10th year of marriage)—realize mate is not as similar to oneself as imagined; and 3rd phase—pivotal, often when talk of a divorce because less tolerant of differences. (*To Understand Each Other*, Paul Tournier, John Knox Press, 1962)

Or, as Tim Timmons has written: "All weddings are happy—it's the living together afterwards that causes all the trouble." (*One + One*, Tim Timmons, Cannon Press, 1974)

Cummunication is considered the heart of a marriage. Dwight Small has written that "it can be said that the success and happiness of any married pair is measurable in terms of the deepening dialogue which characterizes their union." (*After You've Said I Do*, Fleming H. Revell Company, 1968)

In an important book *The Workaholic and His Family* (Minirith, Meier, Wichern, Brewer and Skipper, Baker Book House, 1981) a couple was mentioned who "prided themselves on not having had a fight for several years. One can see from even rough examination that the reason there was no conflict in the marriage was that there was no time spent together."

It is once again clear, in this hearing on divorce, the importance of focusing on the development of family strengths. Earlier this year, this Committee heard Dr. Nick Stinnett tell of his conclusions from years of research by he and his colleagues on this subject. He listed six essential family strengths: (1) commitment; (2) appreciation; 3) communication; (4) time together; (5) spiritual wellness; (6) ability to cope with crises and stress.

It could be said that the lack of these strengths is behind much of the rise of divorce and certainly are critical to overcome the four major causes of divorce.

IMPACT OF DIVORCE UPON CHILDREN

I would like to include the following facts concerning the impact of divorce on children in the record:

In about 3 out of 5 divorces children are involved (Furstenburg)

60% of all divorces involve children (Hetherington, Cox M. & Cox) (R. Nontraditional Families. Hillsdale, New Jersey: Lawrence Erlbaum Associates, 1981)

A large percentage of children have endured the trauma of divorce more than once; many have endured this more than twice (Anthony, *Children at Risk from Divorce*, New York: Wiley, 1974).

Even when the parents had been caught in severely unhappy marriages children usually do not want the divorce to occur. (Wallerstein and Kelly)

56% of parents and 64% of teenagers (12–16) agreed that divorce creates permanent social problems. Of those divorced or separated, 42% of parents and 51% of teenagers agreed. (Zill, National Survey of Children, 1983).

Divorcing families are extremely vulnerable to psychological, physical and economic stress. The triple burden of sole child care, homemaking and (frequently) full time employment often proved too heavy for the custodial parent and seriously eroded her (usually it was the mother) ability to provide sufficient guidance and nurturance to the children. (Wallerstein and Kelly)

4 out of 5 children whose parents divorced or separated are unable to maintain a good relationship with both parents during adolescence. (Wallerstein testimony to Subcommittee on Family and Human Services of the U.S. Senate Committee on Labor and Human Resources; March 22, 1983)

Divorce has a direct and specific impact on the adults' capacity to parent:

(1) Parents are less available to the child.

(2) Emotional support and sensitivity decline as the child is an unwelcome and irritating reminder of the failed marriage.

(3) Pleasure in the parent-child relationship decreases.

(4) Parent is less attentive—there is less talk, play, and interaction altogether.

(5) Inappropriate expressions by the parent increase. (Wallerstein, *Social Work*, Mar–Apr 1985)

Some children take on their own upbringing. These children feel there is no one in charge, fear homelessness, and are weighed down by responsibility. (Wallerstein)

Some children feel responsible for a troubled, needy or depressed parent. (Wallerstein)

A third group of overburdened children are those whose custody has been legally battled over by the parents. These children fear abandonment, are disinterested in school, have poor peer relationships, and are suspicious, and emotionally constricted. (Wallerstein)

300% more teenagers of divorced or separated parents received psychological therapy (30% to 10%). (Zill, National Survey of Children, 1983)

500% more teenagers had been suspended or expelled from school than from low-conflict families (15% to 3%). (Zill, National Survey of Children, 1983)

233% more children from divorced homes were described as needing psychological help (14% to 6%). (Zill, Nat. Survey, 1983)

Children of prolonged separations are likely to experience "acute distress syndrome", acute upset, followed by depression, and finally loss of interest in the parent, or adjustment. (Rutter)

Two-years post-divorce, children in non-divorced families scored significantly higher than children in the divorced families on IQ performance (104.4 and 95.5 respectively) and marginally higher on full scale IQ (106.5 and 100.2). There were no such differences at two months or 1 year. (Hetherington, Cox and Cox)

Risks to children in divorced families (Anthony, *Children at Risk from Divorce*, New York: Wiley, 1974)

(1) Maladjustment and malfunctioning at home and school.

(2) Rejection of marriage as a successful relationship or repeat of parent's divorce pattern.

(3) Psychiatric discorders in adult life.

(4) Since the divorce rate is highest in the first few years of marriage, the affected children tend to be young.

Continuity of relationships, surroundings, and environmental influence are essential for a child's normal development. Since they do not play the same role in later life, their importance is often underrated by the adult world. (Goldstein, Freud and Solnit; 1973)

Disruptions of continuity have different consequences for different ages. For example:

(1) Infancy—Any change in routine leads to food refusals, digestive upsets, sleeping difficulties, and crying. Such reactions occur even if the infant's care is divided merely between mother and baby-sitter.

(2) Infants and Toddlers—When they find themselves abandoned by the parent, they not only suffer separation distress and anxiety but also setbacks in the quality of their next attachments, which will be less trustful. (Goldstein, Freud, and Solnit; 1973)

The evidence of the harmful effects on children is overwhelming. More evidence of these negative affects is becoming available as it is now longer since the dramatic rise in the divorce rate occurred enabling us to observe the long-term damage.

Much like this Committee has seen in the case of teen-age pregnancy and in the case of alcoholism, perhaps the most frightening trend of all is the tendency of children to copy their parents. "Children learn behavior patterns much more by what they see their parents doing than by what they hear their parents saying." (*Family Foundations*, Meier and Meier, Baker Book House 1981)

As the children of divorce increase in number, we are increasingly seeing the tragic consequences of divorce. It has been difficult to do long-term (10+ year) studies in the past because the number of children was not large enough in specific areas to facilitate research. It is only in the last few years—as the impact is more apparent in teenagers whose parents were divorced in the 1970s—that long-term studies have documented these frightening trends. Dr. Judith Wallerstein in particular has pioneered research in this area and shattered the myth that effects on children were only short-term.

It should be pointed out that not all children of divorce develop all the negative social consequences that are often displayed. Whenever this committee discusses a social problem we are talking in relative percentages. Very seldom is any problem 100% correlated with any variable. But it is indisputably clear that divorce has major negative effects on many children and that society then is asked to put the pieces back together as much as is possible. As a society we cannot ignore that individual actions such as divorce put children seriously at risk.

CHILD SUPPORT FACTS

What follows are some statistics that clearly demonstrate the terrible state of child support enforcement in this country. For a more specific detailed analysis I would recommend Lenore Weitzman's book *The Divorce Revolution.*

Of 8.4 million women with children present under age 21, with an absent father, 41% were never awarded child support. For poor mothers, the proportion without child support was even higher at 60%. (Census B. 1981)

41% of women with child support awards receive the full amount, and 28% receive none at all. 53.3% of the women thus receive partial, or no, payment.

Of 84 million female-headed families in 1982, only about 1 million, or 12%, got as much as $200 per month in child support over a full year. 1.9 million got an average of $25 per week. The remaining 5.5 million, absolutely nothing. (Study by National Forum Foundation, Child Support Enforcement: Equal Protection Under the Law by Wayne Dixon, 1985)

For women with court-ordered payments, the mean amount due was $2,290, but the mean amount received was $1,330; therefore, women with court orders received only 58% of the amount they were due. (Census B. Child Support and Alimony, 1983)

Nationally only 11.3% of the absent parents whose children are on welfare are actually paying child support. (National Council of State Child Support Enforcement Administration, 1983)

$4 billion a year is not being collected for children to whom it is due. (Census Bureau 1981)

For many parents, their perspective of the government is that it will provide assistance for their children while they establish new lifestyles and often become parents of more children. (National Council of State Child Support Enforcement Admin 1983)

90% of the families are eligible for AFDC for one of 4 reasons:

(1) Where one or more children are born out-of-wedlock and the father is not contributing sufficient funds.

(2) In cases of desertion where no divorce or settlement agreement is sought.

(3) When father fails to pay support (i.e. court-ordered).

(4) Where father contributes insufficient support. (National Forum Foundation, Child Support Enforcement: Unequal Protection Under the Law, Wayne Dixon 1985)

These facts and others presented during this hearing make it clear that a priority effort should be made on behalf of child support enforcement. There are many different reasons: simple equity, respect for law, cracking down on father irresponsibility, and the obvious financial needs of the women and children involved.

It is likely that if the non-custodial spouse (usually the father) thought that he would in reality have to pay a large percentage of his income for child support that individuals would more carefully consider who they are going to marry, when they should marry, whether they should have children and whether they should seek counseling as opposed to a divorce. To achieve these effects, however, will require significant settlements on a consistent basis.

DIVORCE LAW: IMPACT OF NO-FAULT DIVORCE

History

Divorce previously was "awarded" to the "innocent" spouse and was a kind of punishment for the "guilty" spouse. Typical fault grounds included: adultery, extreme cruelty, willful desertion, willful neglect, habitual intemperance, and conviction of a felony. (Lichenstein, Narman B., "Marital Misconduct and the Allocation of Financial Resources at Divorce: A Farewell to Fault", 54 UMKC LR 1, Fall 1985)

California began the trend in 1969 with the Family Law Act, and the Uniform Marriage and Divorce Act of 1970 which encouraged the move towards no-fault divorce.

South Dakota became the last state to adopt a no-fault basis for divorce, when, on March 14, 1985, it added "irreconcilable differences" to the list of grounds for divorce. (UMKC, pg 4)

A study of the impact of "no fault" divorce laws would be informative, both from a general overview of the increase of the divorce rate in the 1970s, to a more specific analysis of what effect the different types of divorces have upon children. For example, do children who have come through a "fault" divorce (where one person appears to be responsible) as opposed to a "no fault" divorce adjust differently? For example, are children in "fault" marriages less likely to blame themselves? Is there a relationship between the establishment of fault and child support payments?

It appears that states no longer keep data on "no fault" as opposed to "fault" divorces, even when "fault" is relevant in custody/child support cases.

Statutes and grounds

Irreconcilable differences are defined in California as "substantial reasons for not continuing the marriage and which make it appear that the marriage should be dissolved." The judge thus decides which is substantial reason. ("No Fault Divorce Concept: Is This the Final Stage in the Evolution of Divorce?" 47 Notre Dame Law, 959, April 1972)

Another typical no-fault divorce statute involves finding that a marriage is irretrievably broken. Among the grounds are that one finds it intolerable to live with the other or cannot reasonably be expected to live with the other.

It also specifically states that "no court shall require counseling as a condition precedent to a decree, nor shall any employee of any court, or of the state or any political subdivision of the state, be utilized as a marriage counselor." (MO. REV. STAT. 452.320, 1978 and Supp. 1985)

It appears that the testimony of those involved is adequate to support that a marriage has failed. For example, a Commissioner's Note to the Uniform Marriage and Divorce Act: "It is anticipated that the court will find that the marriage is irretrievably broken because there will be no evidence before the court that might support a contrary finding. In rare cases, however, the court may not find the evidence credible."

At least five states now recognize incompatability as a ground for divorce: Alaska, Kansas, Nevada, New Mexico, and Oklahoma. (Clark, Homer Jr., *Domestic Relations,* 3rd Ed, West Publishing)

Reconciliation/"Cooling Off"

Some states such as Iowa have become concerned with the problem of hasty divorce, and make it possible for the court to set aside 90 days during which reconciliation counseling is mandatory. No divorce may be granted prior to this. ("No Fault Divorce Concept," 47 Notre Dame Law) Follow-up research as to the number of marriages that are reconciled would be valuable.

"No Fault" in child custody and support cases

The states are currently split on whether fault should remain a factor in the incidents (property division, maintenance, child support, and child custody) of divorce (Blackstone, Mary Frances, "The Fault Factor in No-Fault Divorce and Equitable Distribution: Some Suggestions for Change in Wyoming", 20 Land and Water Law Review 133, 1985) though the courts have been reluctant to suppress any evidence relevant to the determination of who should get custody.

Some current problems: court setting should be more consistent (ranges from Family Courts equipped with professional staff to local probate judges who are lucky to have a bailiff), guardian ad litem is used infrequently even in cases of allegations of child abuse by one parent, and standards for what is really in the child's "best interests" need to be clarified.

Mediation

Several scholars have suggested that custody cases be mediated. On Nov. 16, 1984, the Family Law Advisory Committee to the Kansas Judicial Council submitted, and had approved, legislation to provide for court-order mediation of child custody and visitation issues in domestic disputes. (Moline, Brian, "Court-Ordered Mediation: New Opportunities in Family Practice", 54 Journal of the Kansas Bar Association, 1985.)

Agreements which come out of the mediation process must be signed in writing to be binding on the parties. In addition, under the Kansas plan, either party may terminate mediation after two sessions. The Commission felt it unwise to "force" more than two sessions.

According to the study done by the Kansas Commission, before passing the new legislation, mediation in California has virtually eliminated custody and visitation disputes. The caseload has declined from 270 in 1977, to 6 to 10 cases in 1982. (Moline)

Conclusion on divorce law

While the specifics are not clear, it is apparent to most observers that "no fault" divorce has accelerated the divorce rates. It is not as clear how this has affected children since "fault" is still considered in many support and custody cases.

It appears that better information needs to be kept if we are to really know what impact this legal change has made. It is rather disheartening that states have one-by-one implemented changes with little interest in researching the actual impact upon states that earlier changed their laws. Because this issue tends to polarize along moral lines, there seems to have been little interest on either side to know much beyond just general facts.

Once again it seems that the debate has focused on the adults—the morality of what they are doing and their freedom of individual choice—rather than looking at the effects on the children or the society as a whole.

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